cent of Alexander Hamilton, the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly."

On the very same decision day, the Court placed added emphasis on First Amendment rights in the Sweezy Case.

TAKE ANOTHER situation in which the Vinson Court did nothing to check trespasses on civil liberties—this time the Executive Branch of the Government. The Department of State had arrogated to itself arbitrary authority to determine, in its own absolute discretion, who could go abroad. Secretary of State Dulles, and Secretary Acheson before him, denied passports whenever they concluded—often on the basis of undisclosed information from anonymous sources—that it was not in the best interests of the United States to allow

CHIEF JUSTICE WARREN
. . . *emphasis on individual freedom*

an American citizen to travel.

This past spring, however, the Warren Court denounced this practice as inconsonant with a clearly recognized constitutional right to travel and held that the Secretary of State could no longer withhold passports whenever he pleased in the absence of legislation fixing standards for the issuance of passports.

Another illustration may be found in regard to the constitutionality of the Government loyalty-security program. In the Dorothy Bailey Case, brought before it in 1950, the Court divided four to four, affirming without opinion a decision by a Circuit Court of Appeals which upheld the Government loyalty program.

It cannot be said that the Warren Court ever passed upon the constitutionality of the loyalty-security program. Nevertheless, in the Peters Case and in the Service Case, the Warren Court held dismissals under the program to be invalid and restored dismissed employes to their positions. And in the Cole Case, it limited application of the program to sensitive positions actually affecting national security.

THERE is one additional area in which the Warren Court has rendered distinguished service as a champion of civil liberties. It has resolutely insisted upon police observance of those procedural protections of the Bill of Rights which laymen are too often disposed to dismiss as mere legal technicalities.

"The history of liberty," Justice Frankfurter once observed, "has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law."

In a number of cases, the Warren Court has upset convictions because police or prosecutors have taken short cuts which involved trespassing on the rights of defendants. To some extent, it may be said that these decisions made law enforcement more difficult. They served, however, to keep police power from becoming oppressive and to make the administration of justice in the United States consonant with an atmosphere of freedom.

IT IS, of course, misleading to speak of the Warren Court or the Vinson Court as though these were distinct bodies governed by the personalities of their Chief Justices. Three Justices—Black, Frankfurter, and Douglas — have served continuously throughout the decade, and the terms of other Justices overlapped our arbitary dividing line. And, in addition, new faces have appeared.

Obviously, there was a complex interaction here. The Court was, as it always is, responsive to the country as well as responsible in some measure for the abatement of its fever.

National security is of vital importance. But we need above all else to remember that the one true function of national security is to make individual freedom secure.

[illegible] can say with certainty what the Warren Court would have done a decade ago. As a matter of fact, no one can say with certainty that the Vinson Court sitting in the latter half instead of first half of the last decade would not have reached the very results that were reached by the Warren Court. The difference between the two courts cannot fairly be ascribed to differences in personality and leadership alone. The temperature of the country was a powerful factor too—and perhaps the determining factor.

It is an attribute of judicial statesmanship to wait until time has ripened the readiness of society to accept new directions in the law. The panic atmosphere in which the Vinson Court functioned no longer prevailed with anything like the same intensity when the Warren Court made its great libertarian decisions. And perhaps the real significance of the Warren Court's championship of individual liberty lies in the reflection of a renascence among Americans of confidence in their own institutions and of respect for the utility of freedom.

NOW IT IS all very well to take heart from the Warren Court's championship of the Bill of Rights and to deduce from this championship that the country's high fever over subversion has subsided. I do not think, however, that there is any justification for concluding that the Nation has completed its convalescence or that all goes well in the best of all possible countries.

Let me point out some stringent considerations in-

CHIEF JUSTICE VINSON
. . . emphasis on national security

dicating that the hangover is still a very severe one.

Item One: Although the Supreme Court has imposed a check on some of the extravagances of the Federal loyalty-security program, that program remains in full force and effect. It is immensely important, I think, to bear in mind that although the program was undertaken on an emergency basis and although its incursions on traditional American civil liberties were justified at its inception as necessary to meet a crucial condition, it has remained in force 11 years without undergoing any real or fundamental modification whatsoever.

It is true, to be sure, that the loyalty-security program is conducted today with more urbanity and sophistication than in the past. It is true that in superficial procedural aspects it has undergone some slight improvement. But it is also true that the central vice of the security program—its reliance on information from faceless accusers—remains altogether unaltered.

The inescapable truth is that the procedures and standards of the loyalty-security program are becoming institutionalized. And the country has, to a very large extent, embraced, as a permanent part of its life, the judgment and punishment of some of its citizens through star-chamber hearings which deny them any semblance of due process of law.

Consider, for another example, that, although Chief Justice Warren said for the Supreme Court in the Watkins Case that "there is no congressional power to expose for the sake of exposure," the simple truth is that the House Committee on Un-American Activities and the Senate Internal Security Subcommittee continue to go up and down the country, each of them functioning as a kind of itinerant *auto-da-fe*, intruding its inquisitorial nose into almost every aspect of American life; they continue to be unrestrained by any jurisdictional limitations imposed by Congress; and they continue to be wholly unconcerned about constitutional rights of privacy.

ITEM TWO: There has been bitter reaction to the Warren Court in Congress. Attempts were made to curtail the Court's jurisdiction. Legislation was introduced—and will no doubt be introduced again—to upset specific Court decisions. Moreover, there has been a tremendous hue and cry in the country against the Court's championship of individual rights.

These are disquieting symptoms. They suggest that the national fever is still pretty high—indeed, that we are in grave danger of a relapse.

The Supreme Court's essential business, as Alexander Hamilton said, is "to declare all acts contrary to the manifest tenor of the Constitution void." But in the last analysis, liberty can be preserved only in the hearts and minds of the people. The Court can serve only as a sentinel of freedom. It can give warning of danger. But it is powerless to protect us from ourselves. It can remind us of our heritage. But it cannot preserve that heritage for us.

If we become fearful of freedom, if we think of it as a source of danger rather than of strength, if we elevate protection of the community above the protection of individual rights, we shall end by aping the very enemy we are trying to repel.

Inaugural Talk Accents States Rights

Ernest F. Hollings became one of South Carolina's youngest chief executives at colorful inauguration ceremonies at the State House Tuesday.

The 37-year-old Charleston lawyer began his administration by hailing South Carolina as a "state of hope and dedication — a state touched by destiny."

In his inaugural address, which was taken up largely with a fiery defense of states rights and a pledge to resist racial integration, Mr. Hollings said "The Battle of the Republic is truly at hand."

DYNAMIC CONSERVATISM

He also lifted high the banner of "dynamic conservatism", calling South Carolina "the stronghold of traditional thought in America . . . the nation's number one hope for the survival of the free enterprise system . . . the nation's hope for the survival of constitutional government."

His address, delivered from a platform decked with bunting, bristled with condemnation of the United States Supreme Court for its "illegal amendment" of the basic law of the land.

"PERIOD OF CHAOS"

Governor Hollings also ticked off other evidences of a "period of chaos" marked by ignoring the form and letter and spirit of the Constitution and the American concept of government by laws instead of men. Referring to President Eisenhower, his attorney general and both national political parties, he said:

"We find a United States Attorney General pledging economic blackmail against our Southland.

"We see both political parties competing to hurl the greatest insults and defamation at our door.

CALLS IKE "PETULANT"

"And worse, we find a confused and petulant Chief Executive assuming command of a marching army, this time not against Berlin, but against Little Rock."

On the other hand he pictured South Carolina as a bastion of economic and political freedom and he said the state's mission is "to put forward a dynamic conservatism as an asset, not a liability."

The nation's businessman continues to come South, Mr. Hollings said, because he appreciates "the character of our people and of our state governments."

APPLAUDED 3 TIMES

3 times the audience of nearly 5,000 applauded the new governor, twice when he declared firmly that South Carolina will continue its firm stand against integrated schools, the third time when he called the Supreme Court's recent rulings "illegal" and said "we struggle to recognize the original (Constitution)".

There is still tolerance and understanding and good will among all South Carolinians today, Mr. Hollings said.

"We are law-abiding people and will not stand for violence against our churches and schools," he declared tersely in an indirect reference to incidents which have plagued some neighboring states, as well as some places in the North.

LEGGE ADMINISTERS OATH

The oath of office was administered to Governor Hollings by Associate Justice Lionel K. Legge of the South Carolina Supreme Court, Mr. Justice Legge is from Charleston.

Behind them on a broad platform was ranged a large assemblage of state and national leaders and personal guests of the program principals.

Governor Hollings is expected

(Please turn to Page 12A, Col. 1)

INAUGURAL ADDRESS

Gov. Hollings Assumes Office; Puts Emphasis on States Rights

(Continued from Page One)

ident pro tempore of the State, presided over the inaugural ceremony, which was also a joint session of the General Assembly.

The Citadel band played the National Anthem at the outset of the program, followed by the Invocation, led by Governor Hollings' pastor, the Rev. Heyward W. Epting of St. John's Lutheran Church, Charleston.

Senator Brown administered the oath to the new lieutenant governor, Burnet R. Maybank, Jr.

OTHER STATE OFFICERS

Chester, formerly pastor of Washington Street Methodist Church of Columbia.

HODGES, VANDIVER ATTEND

Just before delivering his address, Governor Hollings introduced Governor and Mrs. Luther Hodges of North Carolina and said Gov. Ernest Vandiver of Georgia was on his way to the ceremonies but had been delayed slightly (Governor Vandiver arrived in time to review the parade which followed the inaugural rites).

The new governor also presented the outgoing governor, George Bell Timmerman, Jr., and Mrs. Timmerman to the audience and said Mr. Timmerman "has reason only for happy memories because he has done such a splendid job for South Carolina.

Gov. Price Daniel was being inaugurated for a second term term yesterday and could not be present, Mr. Hollings said, but the Texas governor sent along as his personal representative a former Sumter resident, Robert F. Haynesworth, now a businessman in El Paso.

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REC-8

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THE STATE
Columbia, S. C.
Dated 1-21-59

0-19 (Rev. 7-18-58)

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Brown Predicts Resignations of Two Justices

Rep. Clarence J. Brown (R., Ohio) believes that Justices Hugo L. Black and Felix Frankfurter will resign from the Supreme Court "in a relatively short time."

Rep. Brown made the statement yesterday in a weekly newsletter to his constituents. He said it was based on a "whisper" he heard from a "source I thought worth some consideration."

In his newsletter, Rep. Brown mentioned that Justice Black is 72 and Justice Frankfurter 76 and that the latter has "recently been in bad health." Justice Frankfurter suffered a mild heart attack several weeks ago, but returned to the bench earlier this month. (UPI)

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117 JAN 28 1959

52 JAN 28 1959

Wash. Post and Times Herald
Wash. News 14
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date 1/

Fact and Fricton

By William V. Shannon

Washington.

The routine denials by President Eisenhower and Chief Justice Warren have not shaken the widespread conviction here that the story of the coolness between them is true. Robert T. Donovan, who wrote the story published in the Herald Tribune yesterday, is highly regarded by all his colleagues for the factual accuracy of his work and his scrupulous fairness.

The fact is that what has long been talked about and occasionally glimpsed has now been brought out in the open. The fundamental source of friction between the two men is the President's refusal to do anything in a constructive, forehanded way to help carry out the Supreme Court's school desegregation decision.

Warren was early disillusioned by Mr. Eisenhower's attitude on this problem. The President has consistently refused to say he approved of desegregation in principle; he has taken no steps to help make it work in practice. As recently as last year, he expressed the wish that desegregation might proceed more slowly.

Donovan wrote that Warren regards this attitude as being "too indecisive." Warren in fact uses more vivid language to describe the Eisenhower position. He calls it "wishy-washy."

* * *

Here are additional instances that could be cited to illustrate the gradual deterioration in relations:

Mr. Eisenhower was offended when the Chief Justice accepted an invitation to attend the dedication of the Truman Memorial Library. Mr. Eisenhower's feud with Harry Truman is very much alive and he regarded Warren's attendance as an act of disloyalty.

The President has pooh-poohed Warren in conversations he has had with Southern Senators. These Southerners, going down to the White House full of fire and brimstone to complain about the iniquities of the Supreme Court, have been surprised to discover Mr. Eisenhower readily agreeing with them.

President Eisenhower has made no secret of his shock at the Supreme Court's liberal decisions in the civil liberties field. Chief Justice Warren and the majority of his colleagues were not very popular in the FBI, the Justice Dept. nor in the reactionary quarters of Congress after the decisions in the Jencks, Watkins, and Nelson cases in the spring of 1957. The President fully supported the FBI and Justice Dept. in their at-

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RE: "FACT AND FRICTION"
BY
WILLIAM V. SHANNON

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117 FEB 18 1959

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tempts to get bills passed reversing these liberal decisions.

Although Mr. Eisenhower makes much of his refusal to comment on the school desegregation decision because—"I do not believe it is the function or indeed it is desirable for a President to express his approval or disapproval of any Supreme Court decision." (Jan. 21, 1959)—he has no inhibitions about calling, in effect, for the overturn of these civil liberties decisions.

On July 17, 1957, he was asked at a press conference why the Administration opposed letting defense attorneys have relevant material from FBI files as required by the Jencks decision. Mr. Eisenhower replied:

"What they (the Justice Dept.) have opposed is the widespread opening of the FBI files. In any one file in the FBI records, fifteen people may be mentioned, some of them only once and in most derogatory fashion, because somebody in a little village can say, well, he is a skunk,' or worse, and it will be down there in the report submitted by the individual.

"You could do incalculable damage, to my mind, just by opening up the FBI files. It would be terrible," he said.

* * *

In these words, the President was parroting the views set forth by Justice Clark in his dissenting opinion in the Jencks case. After such a performance Warren and his majority colleagues naturally take with a grain of salt the President's protestations on other days that he could not possibly comment on a Supreme Court decision.

The President and the Chief Justice were not ever, of course, personal intimates. What has occurred in the past five years is a steady diminution of warmth in their official relations. How far that diminution has gone we shall never know until the biographers and writers of memoirs begin their work.

Certainly we cannot expect Mr. Eisenhower to admit even to himself that his appointment of Earl Warren as Chief Justice will rank as one of his few great constructive acts in the Presidency.

0-19 (Rev. 1-28-59)

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REC- 28

Group Seeks To Impeach High Court

Associated Press

A group of some two dozen men and women filed a petition yesterday at the House clerk's office to impeach members of the Supreme Court.

Opal Tanner White, spokesman for the group, said the petition was 1500 feet in length and carried names from all over the Nation.

The petition contained foot-long pages headed "Impeach Warren." They were glued together and rolled on three rollers: on each page were instructions to mail the petition, when completed, to the Christian Nationalist Crusade, P. O. Box 27895, Los Angeles 27, Calif.

Mrs. White described herself as chairman of the special committee to impeach the Supreme Court and said her group worked with individuals and many organizations to circulate the petition.

The petition charged that certain members of the Supreme Court "violated their oath by substituting legislation decisions for legal precedent," and that their decisions, if enforced, "will tend to destroy law enforcement agencies, congressional investigation of treason and subversion . . . and destroy the sovereignty of the several states."

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date FEB 5 1959

57 FEB 25 1959

JUDICIAL OLIGARCHY' HIT

Supreme Court Curbs Urged by U.S. Judge

A plea to help in a movement "to save our government" by limiting the power of the U.S. Supreme Court was sounded here yesterday.

U. S. District Judge Dozier DeVane, now retired but still serving from time to time on the federal bench in Florida, addressing the Jacksonville Bar Assn. and many visiting members of the Florida Bar, declared it was not his purpose to criticize the Supreme Court decisions relative to racial segregation in the schools.

"But I am here to criticize the judicial processes by which those decisions were reached and to try to impress upon you full realization of the fact that if we do not find a way to stop it soon, this nation will soon be governed, insofar as its Constitution and its laws are concerned, hy a judicial oligarchy. And I am sure that every one of you will agree with me that this nation will not survive under the domination of a judicial oligarchy," he declared.

Only One Guess

It should be obvious, Judge DeVane said, that under a written constitution which provides the means for its amendment, "the Supreme Court should have only one guess as to the meaning of any provision in the Constitution. If the people disagree with the court on that guess, they and they alone have the power to change it."

Judge DeVane called for support of a proposed amendment to the Constitution which would prohibit the high tribunal from overruling, modifying or changing any prior decision of the Supreme Court construing the Constitution of the United States or acts of Congress promulgated under the Constitution.

The judge noted a number of recent cases, involving issues other than segregation, in which earlier rulings of the Supreme Court have been reversed.

"The damage our Constitution has suffered in this respect all has taken place since 1937, but the damage has been great and *unless something* is done promptly to bring an end to it, it will not be many generations before this government will cease to operate under our written Constitution," he said.

Noting that the chief justices of the supreme courts of 36 other states and many other state and federal judges "have moved out in front in an effort to bring an end to this danger which confronts us," Judge DeVane asked the assembled lawyers to join in the attempt "to set up a roadblock to stop it."

The jurist cited recent Supreme Court interpretations of the Constitution, aside from those having to do strictly with segregation in the *schools*, which, he said, inflicted a great deal more harm upon the people of the nation than will the racial rulings.

Salute Flag

"When the Supreme Court held that the children in our public schools could not be required to stand and salute the flag of the United States and pledge allegiance to the republic for which it stands, when it condemned all forms of religious instruction in our public schools, it struck a death blow to the future welfare of the republic. As a nation we can and will survive only under God," he said.

When the Supreme Court asserts its right not to be bound by its own prior decisions whenever it desires to construe the Constitution or an act of Congress otherwise, "then the Constitution and acts of Congress mean nothing," Judge DeVane declared.

Recalling that an amendment restricting the power of the Supreme Court has been introduced in Congress by Florida's U. S. Rep. Bob Sikes, Judge DeVane said, "May God inspire us and help us to accomplish this objective and thus save our great Constitution."

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Mr. Parsons
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Florida Times-Union
Jacksonville, Florida
Date 2-6-59
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Judge Dozier DeVane

Florida Times-Union
Jacksonville, Florida
Date 2-6-79
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Today in National Affairs

Abraham Lincoln Quoted As Denying Race Equality

By DAVID LAWRENCE

WASHINGTON, Feb. 11.—The nation is celebrating this week the birthday of Abraham Lincoln. Eloquent eulogies are being spoken—and he deserves them all. But if what Abraham Lincoln said just 100 years ago were attributed today to any one else in public life, the same utterances would be denounced as coming from a "racist," or "extremist," or a person who "defies" the Constitution.

Lawrence

Few people realize how outspoken Abraham Lincoln was against a Supreme Court decision and how he insisted that a mere overturning of precedent in a ruling was not "settled law." It was just 100 years ago when Abraham Lincoln was debating with Stephen Douglas in the State of Illinois. Only a few months ago the Library of Congress published a book containing facsimiles of the printers' copy of the stenographic record of Lincoln-Douglas debates "as edited and prepared for the press by Abraham Lincoln."

"Legal Astonisher"

Following is a quotation from Mr. Lincoln's speech delivered on July 13, 1858, at Chicago:

"The sacredness that Judge Douglas throws around this decision (of the Supreme Court of the United States) is a degree of sacredness that has never been before thrown around any other decision. I have never heard of such a thing. Why, decisions apparently contrary to that decision, or that good lawyers thought were contrary to that decision, have been made by that very court before. It is the first of its kind; it is an astonisher in legal history—it is a new wonder of the world."

In speaking further of the Dred Scott decision, Mr. Lincoln said at Quincy, Illinois, on Oct. 13, 1858:

". . . but we nevertheless do oppose that decision as a political rule which shall be binding on the voter to vote for nobody who thinks it wrong, which shall be binding on the members of Congress or the President to favor no measure that does not actually concur with the principles of that decision. We do not propose to be bound by it as a political rule in that way. . . . We propose so resisting it as to have it reversed if we can, and a new judicial rule established upon this subject."

Jefferson Quoted

In another speech delivered in Chicago on July 17, 1858, Mr. Lincoln quoted with approval a letter from Thomas Jefferson, written in 1820, which declared that if the judges of the Supreme Court are to be considered as "the ultimate arbiters of all Constitutional questions," this could be a "very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy."

In a speech delivered at Ottawa, Ill., on Aug. 21, 1858, Mr. Lincoln took up the race question. He denounced slavery, but then added:

"I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two, which in my judgment will probably forever forbid their living together upon the footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position. I have never said anything to the contrary, but I hold that notwithstanding all this, there is no reason in the world why the Negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty and the [redacted] right to [redacted]. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas, he is not my equal in many respects—certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man. . . . .

Never Favored Equality

"What next? Free them and make them politically and socially our equals? My own feelings will not admit of this; and if mine would, we well know that those of the great mass of white people will not. Whether this feeling accords with justice and sound judgment is not the sole question, if, indeed it is any part of it. A universal feeling whether well or ill-founded, cannot be safely disregarded. We cannot, then, make them equals. . . ."

With further reference to the equality or inequality of the races, Mr. Lincoln said, on Sept. 18, 1858, at Charleston Ill.:

"I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races—that I am not nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race. . . . I will add to this that I have never seen to my knowledge a man, woman or child who was in favor of producing a perfect equality, social and political, between Negroes and white men."

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune 15
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date FEB 12 1959

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By Lyle C. Wilson

Hard Reading for Justices

CHIEF JUSTICE EARL WARREN will not like some of this week's news from Chicago. Neither will most of his Supreme Court colleagues.

In the works is a plan which very likely will put the American Bar Association on record with a carefully worded complaint against the U. S. Supreme Court.

The complaint, in layman's language, would be something like this:

That the court has actively, consistently and dangerously weakened the defenses of the United States and the several states against the subversive activities of communism and communists.

There will be no suggestion, of course, that the court has done this deliberately. A special Bar Association committee has prepared for submission today or tomorrow to the ABA House of Delegates a report on communist tactics, strategy and objectives in the United States. The House of Delegates meets in Chicago today and tomorrow.

The ABA Board of Directors screens reports to the House of Delegates and might prevent submission of this one. The special committee, however, has voted to submit the report. Bar Association spokesmen believe it will survive the screening process and go before the House of Delegates. This latter organization is the ABA policy-making body.

The House of Delegates can adopt or reject the special committee report. Adoption would make it an official utterance of the Bar Association itself, which is something some important elements of the association hope to prevent. Odds, however, favor adoption of the report. A report on the same subject was drawn a year ago but was not submitted for consideration by the House of Delegates. It was published in the Aug. 22, 1958, Congressional Record.

The 1959 report will contain proposals for corrective measures against a series of Supreme Court decisions which began about three years ago. There are 23 such decisions, so far.

The 1958 report contained 10 proposed corrective measures intended, in effect, to reverse the Supreme Court by legislation.

The House Judiciary Committee approved last week a bill to counteract the court's decision on the anti-communist Smith Act. In Yates vs. the United States, the Supreme Court—

- Reversed two Federal courts and ruled that the teaching and advocacy of forcible overthrow of the U. S. Government, even with evil intent, was not punishable under the Smith Act so long as the advocacy was divorced from any effort actually to start a revolution going.

The Bar Association special committee said in 1958 the No. 1 communist tactic at that time was nullification of the Smith Act. The Supreme Court has nullified it in considerable degree. FBI Director J. Edgar Hoover testified in January, 1958, that of 109 top communists convicted under the Smith Act of subversive activities, 49 by then had been set free by Supreme Court rulings.

The 1958 report baldly stated that Congress should move to safeguard the nation against the over-all trend of the court in the area of subversion. The 1959 report is said to be stronger. If so, the Chief Justice and most of his associates will find it unpleasant reading.

0-20 (Rev. 1-28-59)

Mr. Tolson
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Miss Gandy

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Supreme Court

UPI -38
(COURT)
BOSTON--CHARLES J. BLOCH, EDITOR OF THE GEORGIA BAR REVIEW, SAID LAST NIGHT THE NATION'S LAWYERS MUST GUARD AGAINST WHAT HE CALLED THE SUPREME COURT'S THREAT TO DESTROY THE ENTIRE BILL OF RIGHTS.
BLOCH TOLD SUFFOLK LAW SCHOOL GRADUATES THE HIGH COURT'S 1954 SCHOOL SEGREGATION DECISION "DESTROYED THE 10TH AMENDMENT" WHICH LEAVES TO THE STATES THOSE POWERS NOT SPECIFICALLY RESERVED FOR THE FEDERAL GOVERNMENT IN THE CONSTITUTION.
"THE COURT FELL INTO THE ERROR OF IGNORING THE FACT THAT ITS POWER IS CONFINED TO ADJUDICATING, NOT INTERPRETING, THE LAW OF THE LAND," BLOCH SAID. HE SAID IT THREATENS TO DESTROY THE BILL OF RIGHTS WHICH GUARANTEED THE RIGHTS OF THE STATES AND THE INDIVIDUAL.
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WASHINGTON CAPITAL NEWS SERVICE

The Court Before The Bar

THE GOVERNING BOARD of the august American Bar Association has approved a recommendation that Congress, by use of the legislative process, reverse some recent decisions of the United States Supreme Court. The rulings in question have upheld individual rights against infringement by state or federal laws designed to combat subversion and communism.

The ABA is on controversial ground and gives evidence that it recognizes this by its cautious approach. The committee report which the ABA governors endorsed is careful to point out that the Supreme Court is "the ultimate guardian of the Bill of Rights and the protector of our freedom."

Nevertheless, says the ABA report now approved for submission to the entire membership:

"Many cases have been decided in such a manner as to encourage an increase in Communist activities in the United States. Our internal security has been weakened by technicalities raised in judicial decisions which too frequently in the public mind have had the effect of putting on trial the machinery of the judicial process and freeing the subversive to go forth and further undermine the nation."

●

THE SUPREME COURT is under increasing fire these days. Much of the attack stems from its libertarian trend.

Some Southerners would undo its mandate against segregated schools, by limiting the court's powers or by constitutional change giving states exclusive authority in the field of education. But segregationists are not the only critics. J. Edgar Hoover the FBI chieftain, lashed out at rulings which "defeat the interests of justice." And Rep. Kenneth R. Keating, New York Republican, said the Court had "gone altogether too far in its zeal to protect the rights of the individual."

The ABA leadership has joined the swelling chorus on philosophical rather than emotional grounds. Its influence will be great because this is a field in which it is qualified to speak.

●

THE GENTLEMEN of the bar are not asking for the creation of precedent. There is ample precedent for Congress (and the people) to say a final word after the Supreme Court has spoken. A most notable case in point is the 16th Amendment authorizing a federal income tax. It specifically nullified an 1895 Supreme Court decision holding that such a tax was unconstitutional.

Precedent, however, is not involved here. A principle is at stake.

The Supreme Court was devised to protect the rights of the individual, regardless of the charges or the temper of the times. An independent judicial authority above the political turmoil has served us well. Though sometimes it has lagged behind public opinion, it has as often been ahead of it. Our system of legislative, judicial and executive authority, no one supreme, is still the best way.

"THE MIAMI HERALD
February 25, 1959
George Beebe,
Managing Editor

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Rulings Weaken Security, Bar Charges

Nation's Lawyers Blast Court as Soft on Reds

Get Tough, Congress Is Urged

'Plug Loopholes With Legislation'

CHICAGO — (UPI) — The American Bar Association Tuesday accused the U. S. Supreme Court of going easy on Communists and called on Congress to step in with tough remedial legislation.

The accusation and recommendation were contained in a controversial resolution approved by overwhelming voice vote at the mid-winter meeting of the ABA's House of Delegates.

The vote made the resolution the official policy of the powerful organization representing 200,000 American lawyers.

The nation's most prominent lawyer, Supreme Court Chief Justice Earl Warren, is not a member. His resignation was accepted by the ABA Friday.

The 50-plus page resolution, prepared by the ABA's special committee on Communist tactics and strategy, said the Supreme Court has weakened the nation's security by its rulings on 24 cases involving accused Communists or anti-subversive legislation.

Flying directly in the face of the court, the ABA delegates demanded that state statutes against sedition be given concurrent enforcement powers as federal laws. The court has held that anti-sedition laws are the exclusive business of the federal government.

The ABA also asked that "wherever there are reasonable grounds to believe that as a result of court decisions internal security is weakened" Congress should enact legislation to plug the loopholes.

The ABA also wants the House un-American Activities Committee to take on the job of studying the operation of existing anti-Communist laws and the House itself to set up a standing anti-Communist investigative committee.

The vast majority of the 246 delegates brushed aside scattered opposition in putting themselves on record as disapproving the Supreme Court's interpretation of how the nation should fight Communist subversion.

Two House Judiciary Committee members congratulated the ABA. Rep. William T. McCulloch (R., Ohio) predicted a "friendly reception" for the proposals in Congress. Rep. Robert T. Ashmore (D., S.C.) was happy that the ABA delegates "finally have come to feel that the Supreme Court is not above criticism."

John D. Randall of Cedar Rapids, Iowa, was nominated to succeed Ross L. Malone of Roswell, N. M., as the next president.

His election will become official at the ABA's August meeting in Miami Beach.

"THE MIAMI HERALD"
February 25, 1959

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Bar Group's Criticism Relied On Reeling on Communist Cases

By ANTHONY LEWIS
Special to The New York Times

WASHINGTON, Feb. 28—The continuing debate of the record of the Supreme Court in internal security questions was sharpened this week by some critical words from the American Bar Association.

The association's House of Delegates, at its mid-year meeting in Chicago, adopted a set of resolutions drafted by a special Committee on Communist Tactics, Strategy and Objectives. The resolutions called on Congress to strengthen anti-subversive laws to meet problems raised by recent Supreme Court decisions.

The supporting report of the special committee, which was not endorsed verbatim by the delegates, set out the reasons for the legislative proposals. They added up to a charge that the court has been soft on communism.

"Many cases have been decided in such a manner as to encourage an increase in Communist activity * * *," the report said. "The paralysis of our internal security grows largely from construction and interpretation centering around technicalities emanating from our judicial process which the Communists seek to destroy, or use as a refuge to masquerade their diabolical objectives."

The report contained little detailed criticism of individual decisions, and little in the way of specific suggestions on how the cases should have been decided. This has been true of most attacks on the Supreme Court over the last century and a half. The committee seemed mainly troubled by the results reached in particular cases. In effect, the complaint was that since 1956 Communists have won too often in the Supreme Court.

Defenders of the court would argue, without standing up for the correctness of each decision at issue, that intelligent discussion at least requires an examination of the alternatives the justices faced in each case and of precisely what the court decided. In those terms, they believe, the court's record is a good one.

As an example one may examine the 1956 case of Steve Nelson, which was a principal target of the A. B. A. report and resolutions.

Pennsylvania Act

Nelson, a Pennsylvania Communist leader, was convicted of violating the Pennsylvania Sedition Act, sentenced to twenty years in prison and fined $10,000 plus $13,000 in costs of prosecution. The violations charged were advocating the overthrow of the Federal Government and, in the language of the statute, encouraging acts "bringing the Government of this state or the United States into hatred or contempt."

The quoted portion of the statute was so restrictive of free speech that its constitutionality was doubtful. There was a possible question of double punishment, since Nelson was [illegible] Court of [illegible] affirmed.

The question [illegible] Earl Warren [illegible] the court chose the [illegible] decision it did in part because of the constitutional [illegible] that would [illegible] This ruling [illegible] through many [illegible] narrow construction of a statute to avoid constitutional [illegible]

Grave Doubts

For example, the court in 1957 read the Smith Act to [illegible] only "incitement to action," not mere "theoretical advocacy" of revolution. Plainly, the majority had grave doubts that Congress could constitutionally punish theoretical talk. In 1958 it narrowly construed the State Department's power over passports so as to avoid passing on the extent of the constitutional right to travel.

In fact, then, the present court has made every effort to avoid taking ultimate positions that the Constitution prohibits governmental actions against subversion.

It is true, however, that a consistent majority of the court in recent years has held the Federal and state governments to a high standard of procedural fairness in dealing with alleged subversion. And, in the course of staying well within the constitutional boundaries, it has confined many statutes within narrow constructions.

The critics believe that the court has erred in not weighing the interests of internal security heavily enough in the balance against individual rights.

The argument may [illegible] boil down to an appraisal of what effects the decisions have actually had on our internal security.

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times 10 E
The Worker
The New Leader
The Wall Street Journal
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[illegible] is on the [illegible] this lead [illegible] that our security has been [illegible] weakened [illegible] the [illegible] for example, has confined the job of protecting the Federal Government to the Government and limited the employee security program to sensitive jobs.

The country's fears about subversion have evidently subsided somewhat in the last few years. But that concern remains is evidenced by the Bar Association action.

It would be easy to read too much into the A. B. A. vote. The association has been a most conservative organization, and it has had committee reports strongly critical of Supreme Court decisions in the Communist area before now.

In some ways the whole record of the Chicago meeting could be read as relatively favorable toward the court. The resolutions specifically condemned broadside attacks on the court. The committee wording was softened on the floor. And the liberalizing trend of the A. B. A. was signified by the choice as president-elect of Whitney North Seymour of New York, a bar leader who is identified with civil liberties and who would not have had a chance for A. B. A. office a few years ago.

Nevertheless, the fact remains that the principle voice of the American bar is on record with recommendations carrying strong implied criticism of the Supreme Court.

The Bar's Report On Reds and Court

A SPECIAL committee of the American Bar Association labored on the subject of Communist tactics, strategy and objectives and produced a 46 page report which is undoubtedly the clearest and most succinct study of the subject and a set of resolutions which the House of Delegates of the American Bar Association adopted.

I listened to Orison S. Marden, a New York lawyer, on television, try to crawl out of the adoption of the resolutions by saying that the report had not been adopted, only the resolutions which in the document are called recommendations. Having meandered through a logical maze, Marden was put to intellectual flight when Roy Cohn, another lawyer, called attention to the fact that the House of Delegates does not adopt reports but only passes the recommendations of the committee.

SOKOLSKY

Having suffered these legalistic puerilities, we might now discuss this significant report. What Marden tried to say was that the report is not an attack on the United States Supreme Court, which it definitely is in matters of subversion, and that if it is, it does not matter as most lawyers regard the Court as the holy of holies of our political system, which it undoubtedly is. But the holy of holies, the inner sanctuary of any temple, can become polluted if improper persons become the High Priests, as, for instance, Caiphas of Biblical fame. An institution is only as good as the men who manage it and in many countries, the instruments of justice and right have been corrupted, if not by money then by the corrosive activities of incorrectly oriented men.

What the report does is to take a series of decisions of the United States Supreme Court in 1956, 1957 and 1958 and show that the Court "legislated" favorably to subversives and subversion and that these decisions are not accidental or incidental or whimsical, but present an intention to change the law. The "recommendations" of the committee call upon Congress to restore the laws governing subversion and subversives.

For instance, in the matter of Cole v. Young, the report states:

"...Three justices dissented holding that the clear purpose of Congress was being frustrated in that the statute had been intended to authorize summary dismissal of employees whose retention would be inimical to the national interests regardless of the sensitivity of their positions."

THE COURT VITIATED the intent [illegible] the "Summary Suspension Act of [illegible]", [illegible] soon in this article to refer to all [illegible] but I should like to quote the committee's [illegible] in the case of Slochower v. Board of [illegible] the City of New York:

"Under the terms of a New York City [illegible] provision which had been long in effect a City [illegible] professor was discharged without notice or hearing for claiming his privilege against self-incrimination when asked about Communist Party membership by a Congressional committee investigating matters of national security. It seemed that the professor had answered similar questions put by a state investigating body and that this information was in the hands of city authorities at the time of his discharge. The Supreme Court reversed the decisions of three New York courts and held that this automatic discharge was unconstitutional because of alleged lack of due process. Four justices dissented."

This committee supports the FBI and the investigative committees of Congress. Concerning the latter, it says:

"Notwithstanding *some mistakes*—fewer than generally charged—the service to our country by the Senate Internal Security Subcommittee and the House Un-American Activities Committee has been incalculable and worthy of far greater praise than has been accorded to them. The Communist and radical propaganda against these committees has never subsided...

"This committee has been astonished to read the proposal to the Congress that one of its committees charged with investigating National and State security and Communist activities be discontinued. We regard any attempt to terminate or to curtail the work of the committee of each house charged with this vital duty as a distinct disservice to the nation."

At the annual convention of the American Bar Association next Summer, these resolutions will again appear on the agenda. Not only the Communist and other leftists but many so-called respectable lawyers will object to them because they will argue that the Supreme Court must never be criticized. In a country of free men, no institution of government must never be criticized.

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Bar Group Hits Court Critics

[illegible] Philadelphia, [illegible] Association yesterday rejected recent criticisms of the United States Supreme Court made by the American Bar Association.

[illegible] the group, after a stormy session, voted 388-183, for a resolution which stated the local group "affirms its faith in the Supreme Court in its traditional role as interpreter of the Constitution and as a protector of our cherished freedom and of the rights of the individual against invasion of his constitutional rights and liberties."

The American Bar's House of Delegates has attacked some of the rulings by the Nation's highest tribunal as weakening the internal security of the country.

Morris L. Ferber, who offered yesterday's resolution as chairman of the bar's Civil Rights Committee, said "such criticisms should be repudiated."

Efforts to table the resolution failed. C. Brewster Rhoads, former chancellor of the association, said it was presented suddenly without permitting members to give it a "lawyer-like sound judgment."

Mr. Rhoads called the resolution "hasty, unreasoned, unthoughtful criticism of the House of Delegates of the American Bar Association."

Another former chancellor, State Supreme Court Justice Thomas D. McBride, spoke against tabling the resolution, pointing out that it couldn't be "dumped now without grave misunderstandings."

"The criticisms of the United States Supreme Court have gotten beyond the tolerable points," Justice McBride said. "They (the court) have been held up as the whipping boy. I don't care if it is criticism of the ABA. The resolution must not be permitted to die."

The ABA, in its criticisms, particularly emphasized the rulings in cases involving [illegible] accused Communists. It recommended that Congress pass remedial legislation which would blunt the Supreme Court decisions.

The Washington Post and Times Herald
The Washington Daily News
The Evening Star 8-17
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
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article: "The Constitution Versus The Court"

(American Mercury, Jan., 1959)
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The Constitution

VERSUS

THE COURT

by Paulsen Spence

As most of us have received the benefits of at least an eighth grade education, it should be patent to all that only by strict adherence to the Constitution can we hope to secure our liberty and promote prosperity. That the Constitution is our Charter of Freedom should be beyond doubt. If our people do not understand this basic fact, then there is something radically wrong with our public school system.

In this discussion, we are not concerned with the relative merits of segregation. Our only concern is that there is no such thing as the Constitution being "flexible and subject to judicial interpretation" and that the official, written Constitution does not provide for the nonsegregation decision and regardless of what is said to the contrary, this decision is not "the law of the land."

As most of our citizenry is inherently law-abiding, many feel that it is wrong to oppose a decision of the U.S. Supreme Court. In the case of the nonsegregation decision, they have no reason to feel that way. Decisions of the Supreme Court are binding only when made in pursuance of the Constitution.

In order to understand why the nonsegregation decision is without Constitutional authority, we must review some of the fundamentals of our form of government.

The States do not derive their power from the Federal Government. The Federal Government derives its power from the States. The legislatures of three-fourths of the States can alter or do away with the Federal Government at will.

After the successful War of the American Revolution, the 13 English colonies were recognized by themselves and the powers of the earth as being sovereign and independent States. These States undertook to get along under certain Articles of Confederation.

Experience proved that this system was not practical and, in 1787, delegates from 12 States met at

Philadelphia for the purpose of creating a more perfect union.

These delegates drew up a contract between these 12 States wherein they agreed to live together in a Federal Union with specifically delegated powers. Like any good lawyer, they reduced this agreement to writing so there would be no chance of any future misunderstanding. They called this contract "The Constitution of the United STATES of America".

After the contract was signed by the delegates, it was submitted to the States for ratification. The States said: "This is a fine contract, but we cannot ratify it unless additional safeguards are added to protect us against this new Federal Government."

As an outcome, a gentlemen's agreement was made for the States to ratify the contract with the proviso that 12 amendments would be submitted by the First Congress to the States for ratification. Ten of these amendments became that which we now call "The Bill of Rights."

Article VI, Clause 2, of the Constitution states:

> This Constitution and the laws of the United States which shall be made in pursuance thereof: . . . shall be the supreme law of the land; . . .

and the Tenth of the above mentioned Amendments states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

This adds up to just one thing and that is that the Federal Government has no power other than that specifically delegated to it by the Constitution and any action of the Federal Government which is not in pursuance of the Constitution is, of itself, null and void.

THE PRESIDENT and others refer to the nonsegregation decision as being the law of the land. What law?

Under our form of Government, the courts have no legislative power. In Osborn *v.* the Bank of the United States, the Supreme Court, presided over by the great John Marshall, in 1824, clearly stated the function of the Court when it said:

> Judicial power, as contradistinguished from the power of laws, has no existence. Courts are mere instruments of the law, and can will nothing . . . Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; . . .

In Wayman *v.* Southard, in 1825, John Marshall also said: "The legislature makes . . . and the judiciary construes the laws." And in Hennington *v.* Georgia, in 1896, and in Newport and Cincinnati Bridge Company *v.* United States,

in 1882, the Supreme Court of the United States reaffirmed this fact when it said:

> This court . . . has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or unpolitic. Considerations of that sort must, in general, be addressed to the legislature. Questions of policy determined there are concluded here." "For protection against unjust or unwise legislation, within the limits of recognized legislative power, the people must look to the polls and not to the courts.

As J. Y. Sanders, Jr., asks in the *Louisiana Bar Journal*, October, 1956:

> Has the Supreme Court the right to *change* the Constitution by interpretation?
>
> Has the Supreme Court the right to rule by edict where it considers the Congress in error in failing to legislate?
>
> Have we exchanged the 'divine right of kings' for 'divine right of the Supreme Court'?
>
> Have we substituted for the government of checks and balances instituted by the Founding Fathers a supreme, omnipotent and infallible Supreme Court as the final arbiter of our destinies?

On Page 30 of a pamphlet, copyrighted in 1946, known as "The Road to Freedom," I made the following statement:

> Parts of the present 13th and 14th Amendments having to do with slavery and citizenship, are included in the suggested amendments at the conclusion of this pamphlet for the reason conveyed by Abraham Lincoln when he said that in his opinion those amendments would not be valid unless approved by the Southern States. Inasmuch as they were approved by Carpetbagger and Scalawag legislature, who no more represented the people of the Southern States than did the Quisling and Laval governments represent the people of Norway and France, these amendments along with the 15th are not a valid part of the Constitution.

This theme was independently proved by Walter J. Suthon, Jr., in an enlightening brief entitled: "The Dubious Origin of the 14th Amendment." (*Tulane Law Review*, December, 1953)

As Mr. Suthon points out, Article V (not the Fifth Amendment) outlines the specific methods to be followed by which the States, if they see fit, shall have power to amend the Constitution.

When the so-called 14th and 15th Amendments were submitted, the requirements of Article V were not adhered to, and therefore the 14th and 15th Amendments do not exist. The fact that the Southern States were forced to ratify these Amendments at the point of a bayonet has no bearing here. If the Amendments were not submitted in pursuance of Article V of the Constitution, that is that. Any person who maintains that the 14th and 15th Amendments are valid is

either intellectually dishonest or stupid.

BUT, even though the 14th Amendment were valid, the nonsegregation decision is still invalid for the reason that the Fifth Section of the 14th Amendment states:

> The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

The Congress has passed no law prohibiting the States from segregating the races. Nor is there anything in the Constitution that authorizes the President to send forth the Armed Forces to enforce an edict of the Supreme Court which is not in pursuance of the Constitution. Nor is there anything in the Constitution that requires a judge of an inferior court to ignore his oath of office by following a ukase of the Supreme Court which he knows is unconstitutional.

Almost everyone probably will agree that the Supreme Court has leaned over backward in its efforts to help the Communists. Suppose that it would decide to help the Communists to the extent that they should order the Navy to scuttle its ships, the Air Force to destroy its planes and the Army to do away with its atomic weapons. Even though such an order would mean National suicide, the President and some members of the inferior courts would, doubtless, take the position that because it was so ordered by the Supreme Court, the decision was the "law of the land" and all must abide by it. The nonsegregation decision is just as far-fetched and just as unconstitutional.

J. Y. Sanders, Jr., in the article already alluded to, demonstrates that the Supreme Court, by following exactly the same reasoning it used in the nonsegregation decision, can also rule that:

> The theory of private ownership of property in our country has a detrimental effect upon those who do not own property. The impact is all the greater in that it has the sanction of the law. The policy of separating the classes on account of their wealth or lack of wealth is usually interpreted as indicating an inferiority of the poorer group. This sense of inferiority affects the character of the adult and seriously affects the motivation of the children of the poor. The fact that one class of people live in fine houses while another class of people are compelled by the operation of this so-called law (private ownership) to live in tenements or even 'slums' has a tendency to retard the political, social and economic as well as the mental development of the poorer class of children and creates a sense of inferiority and class frustration upon the poorer classes who feel that they are deprived of an inherent right by the operation of this so-called artificial law.
>
> . . . We conclude that in the field of economics the doctrine of private ownership of property has no place. Separate and private owner-

ship of property is inherently unequal. Therefore, we rule that the plaintiffs and all similarly situated for whom the actions have been brought are by reason of the so-called law of private ownership complained of, deprived of equal protection of the law as guaranteed by the 14th Amendment. . . .

WOULD *this* be the "law of the land"?

It must be reiterated that the Supreme Court has no power to make laws and there exists no nonsegregation law. Only the Congress can make "the law of the land" and that law *must be in pursuance of the Constitution.*

When Napoleon agreed to sell Louisiana to the United States, he stipulated that Louisiana was to be admitted to the Union as a State.

Louisiana was to have all the rights and privileges of the original 13 States.

When Louisiana became a State in 1812, it agreed only to those provisions as written into the Constitution. Louisiana did not agree that, 142 years later, it would accept the dictates of a Supreme Court that were not in pursuance of those written provisions.

There are those who urge the Southern members of the Congress and the State officials to live up to their oaths of office. They have "the cart before the horse". It is the members of the Supreme Court and the President who should live up to their oaths of office.

Integration is a side issue. The main issue is: are we, the people, going to insist that the Federal Government live within the powers delegated to it by the Constitution, or are we going to allow, as Thomas Jefferson predicted we would, an unelected judiciary, serving for life, to eat away the foundations of our Constitution?

The War of the American Revolution was fought to throw off the yoke of an English king who had heaped all kinds of abuses upon the American Colonies. These abuses are plainly stated in the Declaration of Independence.

When those great men drew up the Constitution, the abuses of the English Crown were fresh in their minds and they set about to create a Federal Government under which such abuses could not exist.

As explained in the October, 1957, "AMERICAN MERCURY," in spite of their efforts, abuses have crept in. These abuses, if not curbed, could result in some future generation being forced to write a new Declaration of Independence and to fight a new War of the American Revolution.

In other words, if we are so stupid as to allow the Federal Government to buy us with our own money and, by ignoring the provisions of the Constitution, take our freedom away from us, our posterity, in order to regain their freedom, will have to do the same things our forebears did.

THE MOST simple way to nip these abuses in the bud would be for the people to force the legislatures of their respective States to exercise the right the States reserved in Article V of the Constitution, and require the Congress to call a convention for the purpose of adopting Constitutional Amendments along the following lines:

The first of these proposed amendments replaces the unconstitutional 14th without impairing the rights of the States. The fact that there are more decisions, few of which have any reference to Negroes, based on the so-called 14th Amendment than on any other, indicates a need for a 14th Amendment. As the arguments against the 14th and 15th Amendments are irrefutable, there is little doubt that some future Supreme Court, made up of learned and impartial justices, will throw these Amendments out. It would, therefore, save a lot of confusion to adopt a correct amendment before the present so-called 14th Amendment is invalidated.

The second of these proposed amendments would, by repealing the 17th Amendment, return the choosing of United States Senators to the State legislatures. It was the Founders' plan that the members of the House of Representatives were to represent the people. The Senators were to represent the States. No harm could come from a provision that would allow the people to veto an unpopular choice. Such a veto provision would have probably eliminated the Lorimer Case, which caused the adoption of the 17th Amendment.

The third proposed amendment is intended to overcome the objections of that greatest of statesmen, Thomas Jefferson. This plan provides for the United States Senate to select ten of the 11 Supreme Court Judges for rotated terms of ten years, with the legislatures of the States, in each judicial circuit, holding the veto power. It also requires that the Supreme Court Judges have ample experience, represent all sections of the Nation, and be, as the President, native born.

See page 97, this issue

Security is mostly a superstition. It does not exist in nature, nor do the children of men as a whole experience it. Avoiding danger is no safer in the long run than outright exposure. Life is either a daring adventure, or nothing. Serious harm, I am afraid, has been wrought to our generation by fostering the idea that they would live secure in a permanent order of things. They have expected stability and find none within themselves or in their universe. Before it is too late they must learn and teach others that only by brave acceptance of change and all-time crisis-ethics can they rise to the height of superlative responsibility.—HELEN KELLER

FD-350 (Rev. 1-25-59)

[illegible] IS LAW

But Supreme Court Judges Learn That Nobody Likes Ump

By ARTHUR WATSON

WASHINGTON, March 7.—By now, the nine august jurists of the Supreme Court must feel a little like the umpires at the old Brooklyn Dodgers games—totally unappreciated.

For months, their decisions in key issues have been drawing boos from the bleachers. Fiery integrationists have denounced them for opening Southern schools to Negroes. Zealous patriots have assailed them for being soft, legally speaking, on Reds.

A delegation led by a determined lady named Opal Tanner White has even demanded they be impeached, apparently on general principles. Threatening letters have caused the FBI to post a guard around the Chief Justice.

All this has saddened the justices, of course. Still, they are understanding men who realize that a judge's lot, like an umpire's, is not a happy one. They expect a certain amount of discord from the spectators.

But just the other day the house of delegates of the staid American Bar Association—their own colleagues, so to speak—gave them the [illegible].

In measured prose, the ABA faulted 23 of the high tribunal's legal calls and suggested in effect, that Congress review the court's umpiring and enact some laws that would change the rules.

In an earlier day, such quarreling with the court's decisions might have provoked a testy justice into challenging a detractor to a duel or at least caning him. But the years have imposed a tradition of chilly aloofness that makes it unthinkable for the justices to retaliate even in words.

Today, they must take no notice of their critics—in public, at least. Privately, more than one member of the court is fuming at the faultfinding [illegible] them on all [illegible].

For instance, the officially denied story that Chief Justice Earl Warren is furious at President Eisenhower is still going strong here. Warren is said to feel that the President let him down badly by not disputing the court's critics, particularly on the integration issue.

Only the crackpots among the court's detractors have launched their attacks on a personal level. To almost everyone else, friend and foe alike, the men who sit on the nation's highest bench are impersonal and remote.

But beneath those flowing black robes and all that dignity are nine ordinary men, who, like other men, put their pants on one leg at a time. What really separates them from the rest is that they are prisoners of their jobs.

And, now that they are popping into the news every day or so, a closeup on them is apropos. Take Chief Justice Warren . . .

* * *

AFTER spending most of his life in the rough and tumble of politics, Warren has found it difficult to adjust to the frigid inaccessibility that has become traditional with the court.

The genial ex-governor of California, is a glad-hander at heart and, unlike some of his

(Associated Press foto)

[illegible] taking 160-mile [illegible] along [illegible] canal trail from Cumberland, Md., to Washington.

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Belmont
DeLoach
McGuire
Mohr
Parsons
Rosen
Tamm
Trotter
W.C. Sullivan
Tele. Room
Holloman
Gandy

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News 100
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
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Washington," says capitol reporter [illegible] Fulford, who knows Chief Justice well.

Warren is known to have been shocked and dismayed by the FBI decision that the threats against him were serious enough to warrant a round-the-clock guard. Until his appointment to the high bench the only enmity he aroused was political and impersonal.

"Who would take a potshot at a judge?" he asked, wonderingly, when he was told of the security measures.

The threatening letters have not curtailed Warren's frequent attendance at Washington galas, where he usually can be found off in a corner talking politics—his favorite topic—with old friends and fellow veterans of the political wars.

Some Wonder If Warren Is Eyeing White House

His passion for politics, undiminished even after five years of isolation from the hustings, has caused some observers to wonder if he secretly harbors White House ambitions despite his very definite disclaimer back in 1952.

But those who know him best are convinced his interest in politics is now purely conversational and that his true love is that of a lawyer for the court. Anyway, he is 67—a little old for the Presidency.

Next to politics, Warren's chief outside interest is sports. He is said to have put the court on a five-day week in 1955 so that he would be free for Saturday's football games.

For the Army-Navy game in Philadelphia that year, the Chief Justice hired a private railroad car, *arranged for* lunch and dinner to be served on it, and invited his eight court colleagues and their wives to attend the inter-service classic as his guests. He even picked up the tab for the tickets, if there was a tab. (The services are secretive about their free list to the big game.)

Warren's "football special" was an annual junket until this past fall, when it was cancelled for undisclosed reasons. Mrs. Tom Clark ventured the explanation that perhaps the host couldn't get tickets, but this

Athletically inclined, Justice Warren takes to the tan sharp with frequent swimming and handball games at the basement gym of the Supreme Court Building. Like most big men—he's 6 feet 1 and normally weighs over 200 pounds—the Chief Justice wages a constant battle with fat.

In less than a year after he traded a vigorous outdoor life in California for the sedentary routine of the court, Warren learned to his horror that he was gaining weight at an alarming rate. He immediately went on a sugarless and starchless diet and trimmed off 20 pounds.

The Warrens live modestly in a hotel-apartment with their unmarried daughter, Virginia, one of the reigning belles of the capital. Mrs. Warren usually cooks the meals when they dine at home, and her husband has his food sent up from the hotel kitchen when she is in California visiting her grandchildren.

* * *

AT the foot of the long conference table that Chief Justice Warren presides over in the Supreme Court's "inner sanctum," where decisions are sometimes hotly argued, sits the ranking associate justice, courtly but quick-tempered Hugo Lafayette Black, 72.

Appointed from the Senate in 1937, Alabama-born Black took his seat on the court amid a bitter controversy over the disclosure that he had once held a card in the bigotry-peddling Ku Klux Klan.

Though he explained that the KKK card was issued to him unsolicited (in the South in the 1920s it was a rare politician who could escape a Klan card), Black's swearing-in was held up almost two months while the argument raged.

Like Warren, he has the true politician's genuine liking for people. His easy manner and Old South charm, plus a real talent for mimicking pontifical public speakers and TV commentators, made him a sought-after guest until the death of [illegible] six years ago, when he withdrew from the social scene.

For almost four years Black

"Tennis, Anyone?" Fetches Black

[illegible] in his 60s he was [illegible] doctor against playing [illegible]

"Singles aren't good for [illegible] in their 40s," the doctor [illegible]

"Well, then," Black [illegible] can't wait until I'm 50."

Black's drive [illegible] the court, where his [illegible] pound his knowledge [illegible] said to touch off some [illegible] changes with Justice Felix Frankfurter, no man to withhold [illegible] point of view on any [illegible]

Relations between the two men said to be rigidly formal, [illegible] Black is believed to have forgiven Frankfurter for [illegible] with the late Justice Robert [illegible] son in a feud that began when Black refused to disqualify himself in a case [illegible] former law partner.

* * *

FRANKFURTER is [illegible] most disputatious—and [illegible] troversial—member of the court. A professor at Harvard Law School from 1914 to 1939, he was appointed to the [illegible] Frankfurter's knowledge of law is unchallenged but his interpretations of [illegible] same angle, that.

"Felix was a great law professor," says an expert on the court, "and he knows the law, but

[illegible]

... interrupt the Chief Justice if he thinks his associate's questions (the justices do a great deal of questioning from the bench) are straying from the point.

Frankfurter Demands Contentious Clerks

Unlike the other members of the court, Frankfurter drafts all his clerks from Harvard Law and insists that the dean send him only young men spunky enough to argue with him—not only on points of law but also on the proper wording of opinions.

(Frankfurter's employment of Harvard types was the basis of an old quip about left-wingers in government: "How to get ahead in Washington—go to Harvard Law and turn left.")

Capital society seldom sees the bustling little justice — he is scarcely more than 5 feet and wears a pince-nez with a black ribbon that makes him look like a wise old owl. His wife, Marion, suffers from arthritis and hardly ever leaves their three-story gray brick house in Georgetown.

Probably, Frankfurter doesn't miss the social scene.

"Felix has only two interests anyway," says a friend. "One is the law and the other is his wife."

B APPROX 1882

The best-known member of the court outside Warren is Justice William O. Douglas, 60, whose marathon hikes and mountain climbing expeditions into far-away lands have made him a familiar, if puzzling, figure to millions of newspaper readers.

Irrepressibly outspoken, Douglas is no respecter of precedent. For example, his speech to labor

DC. - Md.

[illegible] ... Douglas, daughter of a [illegible] ... was the wife of an Interior Department official [illegible] ... Douglas.

The romance was an open secret, but all four of the principals were so well known and liked that it escaped becoming a scandal.

A one-time employe of former Rep. Helen Gahagan Douglas (D-Calif.), Mrs. Douglas is a colleague as well as wife and has helped her husband prepare a number of books. Last year, they moved into a house overlooking one of the locks of the Chesapeake and Ohio canal, where he walks and walks and walks.

DC. — Texas — [illegible]

POSSIBLY the happiest man on the high bench is Tom Clark, a former U. S. attorney general who got his heart's desire when President Truman appointed him to the Supreme Court 10 years ago. A lawyer through and through, Clark's dream even in law school was to sit on the court.

While it was generally agreed that he was a skilled politician and a shrewd lawyer, there were some who doubted that Clark was qualified to be a justice.

But even these critics agree now that Clark has grown with the job. A hard worker—"I've got to work twice as hard because I'm not as smart as some of the other fellows," he once said—Clark is emerging as a sound if not brilliant judge.

On the generally liberal Warren court, Clark finds himself leaning toward the conservative side; a recent instance was his reasoned and forceful dissent in the case that opened the FBI

[illegible] ... tradition ... discarded his ... of the gaudy bow ties he habitually wore, and now wears only black ones.

The Clarks live in the capital's most exclusive apartment house, where they entertain frequently. His principal outside interest is golf, which he plays at Burning Tree (the President's club), usually with retired Justice Stanley Reed, an old friend.

Four Other Justices Are Widely Unknown

The remaining four justices are little known in Washington and virtually unknown in the rest of the U.S.—three because they prefer it that way and the fourth because he has just joined the court.

B APPROX 1900

The clue to 57-year-old Justice John Marshall Harlan's personality lies in his given name. Named for John Marshall, the nation's greatest chief justice, Harlan has striven all his life to apply Marshall's principles to his own legal career. DC. — N.Y.

The law, it is said, is his whole life. A neighbor in Georgetown, Mrs. Francis Biddle, says she frequently sees Harlan coming home after dark "with an armload of work."

He is so seldom seen otherwise that it came as a surprise to his community when he joined a citizens association dedicated to preserving the historic streets and homes of Georgetown. But he rarely puts in an appearance at meetings.

Considered a judge's judge, Harlan's promotion from the U.S. Court of Appeals in New York somewhat offset the lack of judicial background in an earlier Eisenhower appointee—Warren, who had never been a judge.

Harlan and his wife, Ethel, are a quiet couple whose chief [illegible] ... historic Georgetown.

Another member of the court named for a famed chief justice is 57-year-old Charles Evans Whittaker (Marshall and Charles Evans Hughes wrote the two great opinions on the Supreme Court's power to determine the

D.C. MD.

[illegible] ... Douglases and [illegible] ... in an interview ... living in Washington.

DC. B APPROX [illegible]

[illegible] ... serve ... death of Justice [illegible] ... in 1949 is Justice William Brennan, 52, a son of Irish immigrant parents, who was appointed two years ago from the New Jersey Supreme Court.

A Democrat, though [illegible] ... tive politically, Brennan's appointment came as a complete surprise to him. He got a call one day from ex-U.S. Attorney General Herbert Brownell who asked him to be in Washington the next day [illegible] ...

It was not until Brennan reached the capital and met the President that he learned he was to succeed Justice Sherman Minton, who retired because of failing health.

A specialist in labor law before he was named to the New Jersey Supreme Court, Brennan established a reputation as a moderate liberal and a defender of civil rights. But he has not been a member of the Supreme Court long enough to be classified as a liberal or a conservative.

Like the Whittakers, the Brennans thus far have not been much socially around the capital. But in time they undoubtedly will be—Brennan has a warm, friendly personality ... [illegible] ... behind the somber ... of the court.

The Brennans live in fashionable Georgetown. They have three children, William J. 3d, [illegible] ... and Nancy, [illegible]

The youngest member of the court in years [illegible] ... appointed last October ... turned down a chance to be mayor of Cincinnati, his home town, because he thought the job would take too much time from his family.

Ohio — DC

That was in 1961, when [illegible] ... art, then a rising figure [illegible]

B. APPROX 1912

2

[illegal] council. He was [illegal] the mayor's job under a system in which the majority party on the council elects the mayor from its own membership.

Although he never held a judicial job until he was named to the U.S. Court of Appeals in Cincinnati a little over four years ago, Stewart was brought up in an atmosphere of law.

His father, Ohio Supreme Court Justice Garfield Stewart, a leading trial lawyer, discussed his cases at the dinner table and made the law a romantic calling to his son.

Stewart studied at Yale and Cambridge, and practiced in New York after war service as an officer aboard a Navy tanker. He married a Long Island girl, Mary Ann Bertles, and in 1947 they returned to Cincinnati.

The Stewarts haven't yet settled down in Washington. Their first taste of the capital was a heady one—President and Mrs. Eisenhower's dinner for the justices and their wives—and left Mrs. Stewart breathless.

"I was tremendously impressed by their graciousness and warmth," she said.

Like the Brennans, the Stewarts have three children: Harriet, 12; Potter Jr., 10, and David, 7.

Though he's just a fledgling, Potter has already learned one thing: booing the umpire is not limited to the ball park.

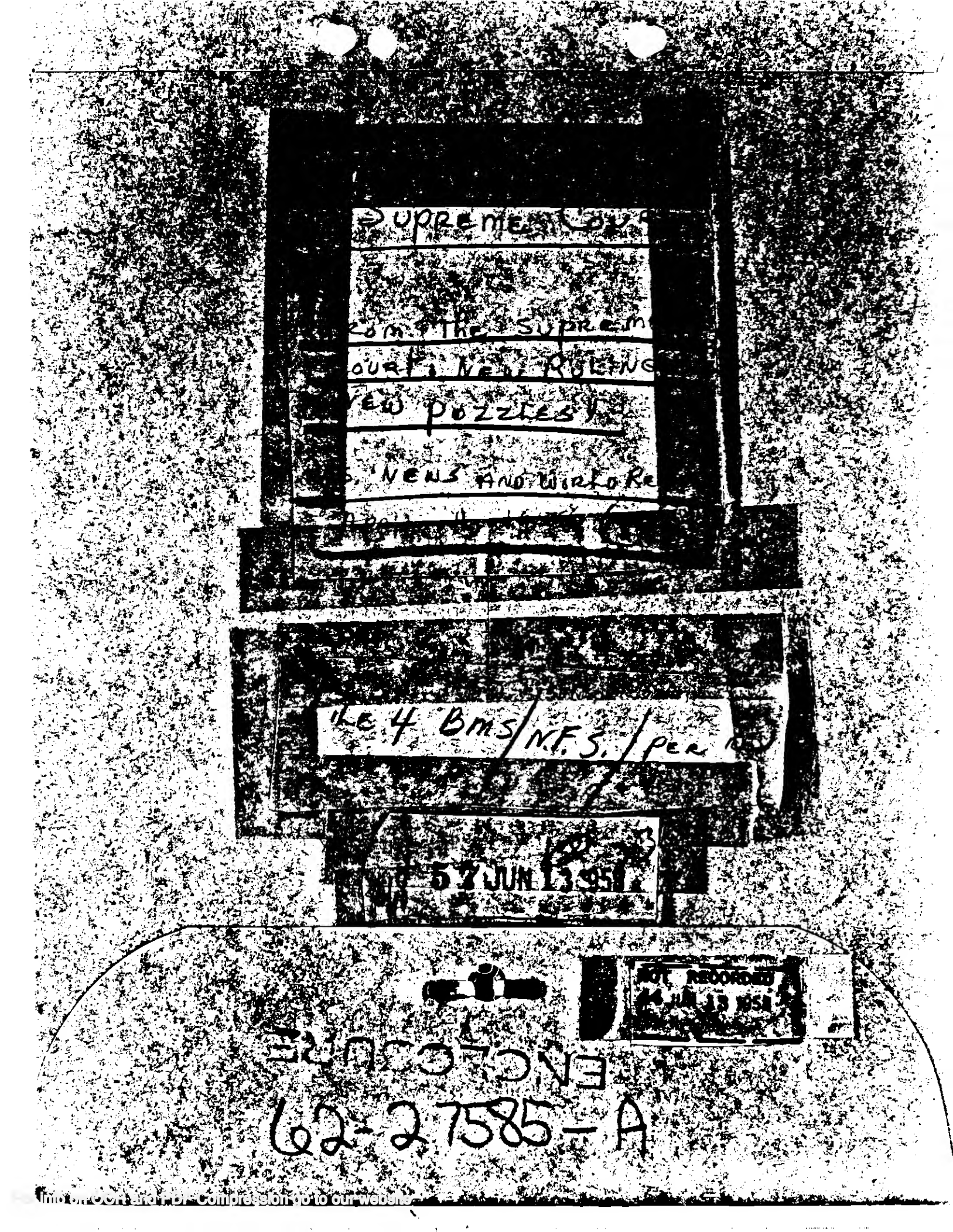
(Wide World Photo)

Said to be happiest man on court, Clark's appointment was culmination of dream that began in law school. He's shown [illegal] gun here (or hunting [illegal]

They Review All Non-Judicial Decisions

Proof that romance can bloom in court's solemn air, [illegible] second wife, [illegible] Elizabeth De[illegible], 55 [illegible] months ago. [illegible] was widowed [illegible] Sitting [illegible] Mrs. Douglas [illegible] husband has since retired [illegible] standing [illegible] Empty chair [illegible]

Everybody Seems to Be Picking on Them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FROM THE SUPREME COURT: NEW RULINGS, NEW PUZZLES

Look at recent decisions of the Supreme Court, and you find—

When it comes to rights of individuals as opposed to powers of the state, the nine Justices are divided into two comps.

What is this new line-up? Who are the "swing men"?

In five cases involving citizenship rights and contempt of court, the sharp division on the Court is made clear.

The Supreme Court appears to be dividing into two distinct wings in cases that involve the constitutional rights of individuals.

On the side of the individual as against the state are Chief Justice Earl Warren and Justices Hugo L. Black and William O. Douglas. On the side of broad powers for the Government are Justices Felix Frankfurter, Harold H. Burton, Tom C. Clark and John M. Harlan. The "swing men" who determine the majority are Justices William J. Brennan, Jr., and Charles E. Whittaker.

This division was pointed up last week in three cases that involved taking citizenship away from native-born Americans and in two cases involving power of lower courts to punish for contempt.

In one of the citizenship cases, a Court majority held that citizens who vote in foreign elections can lose their citizenship. In the second, it held that citizenship cannot be taken from a soldier for wartime desertion. In the third, a majority held that serving in an enemy army during war could not lead to loss of citizenship unless Government proves clearly the service was willing.

Line-up on citizenship. These confusing decisions started with a majority holding that Congress, because of its authority over foreign relations, can pass laws that take away citizenship for voting in foreign elections. The case involved a native of Texas who voted in Mexico. This opinion was written by Justice Frankfurter, supported by Justices Burton, Clark, Harlan and Brennan.

The Chief Justice, joined by Justices Black and Douglas, dissented sharply, holding that citizenship stems from the Constitution and that Congress has no power to deprive any native-born American of these rights. Justice Whittaker dissented, too, but on the ground that voting in a foreign election, which may be legal in that country, is not serious enough to involve loss of citizenship.

Then, in the desertion case, the trio of Warren, Black and Douglas was joined by Justice Whittaker in holding a law depriving a deserter of citizenship imposes "cruel and unusual punishment" in violation of the Eighth Amendment. The judgment to restore citizenship also was supported by Justice Brennan, but on the ground that Congress had no authority under its war powers to deny citizenship to deserters. Dissents were recorded by Justices Frankfurter, Burton, Clark and Harlan, who denied that loss of citizenship amounts to "cruel and unusual punishment."

In the third case, involving a U. S.-born Japanese drafted into the Japanese Army in World War II, seven Justices held that the Government must prove clearly that the citizen served willingly. Justices Harlan and Clark dissented.

On contempt: a similar split. The contempt cases involved people accused of Communist connections, and a majority in each case held against these individuals. But, in each case, the Warren-Black-Douglas trio dissented, joined on other grounds by Justice Brennan.

One case concerned two of the first 11 Communists who were found guilty of advocating violent overthrow of the Government. This pair jumped bail and fled as they were about to be sentenced to prison. They surrendered five years later and were sentenced to an additional three years for contempt of court. Justice Harlan, writing for the majority, upheld the power of courts to punish criminal contempts without jury trials. Justice Black, for the dissenters, argued that it is time to change this judicial practice and require jury trials in criminal contempt cases. Justice Brennan dissented on the ground that the evidence of contempt was not sufficient.

The other contempt case involved the Fifth Amendment's protection against self-incrimination. The Government charged that a woman falsely denied Communist connections when she was naturalized and should lose her naturalization. She testified in her own behalf, but refused to answer questions on cross-examination, raising the Fifth Amendment. The judge ruled the defendant waived protection when she testified, sentenced her to six months for contempt.

USN&WR Photo

NEW LOOK AT THE SUPREME COURT

Now revealed: opposing wings on individual rights

Justice Whittaker joined the Frankfurter-Burton-Clark-Harlan contingent to uphold the lower court. The Warren-Black-Douglas wing again dissented, with Justice Black arguing that in civil cases defendants need not waive the Fifth Amendment protection to testify in their own behalf. Justice Brennan dissented on the ground that other penalties should have been used.

These five cases provide strong indication that the Supreme Court—bitterly criticized in Congress and elsewhere—is rather sharply divided itself. [END]

Supreme Court +

The Supreme Court +

The Judges of the Court

Time Magazine

Apr. 14, 1958

(pg. 20, 21)

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in an extremely ugly position before world opinion." "Like Carmen Basilio," [illegible] New York *Times*'s James Reston, "the U.S. has taken a terrible beating." The St. Louis *Post-Dispatch* talked of "an unnecessary loss of initiative in peace negotiations." Democrat Adlai Stevenson, who had unavailingly proposed in his 1956 campaign that the U.S. suspend its own nuclear tests unilaterally, feared that the U.S.S.R.'s move might "deprive us of the moral leadership."

Vital Samplings. Prodded at his news conference, Secretary of State John Foster Dulles fell into the hole, conceded that the U.S.S.R. had won "a certain propaganda victory." But, said Dulles, the President had been forewarned about the Kremlin's move, had consulted with senior officials (Dulles, Deputy Defense Secretary Donald Quarles, Atomic Energy Commission Chairman Lewis Strauss) on whether "to try to steal a march on the Soviet" by announcing a suspension of U.S. nuclear tests. He had decided that this summer's tests of "clean," *i.e.*, low-fallout nuclear weapons at Eniwetok Atoll were essential to U.S. security. Said Dulles: "We decided that we could not, in fairness to our responsibilities and our duties to the American people, perhaps to humanity, desist in a program which we believe to be sound merely for propaganda purposes."

Next day the President took over the offensive. He told his news conference that the U.S.S.R.'s move was "just a side issue. I think it is a gimmick, and I don't think it is to be taken seriously." And soon overseas reports showed that, from Canada to France to Japan, there was much more suspicion and skepticism about the Kremlin's intentions than had been expected (see FOREIGN NEWS). The *Christian Science Monitor* summed up its own samplings thus: "People aren't fools. We believe that the Kremlin has underestimated the intelligence of today's world, that it has been a bit too clever, and that its insincerity can be exposed."

Vital Shiftings. But such healthy anti-propaganda propaganda was not to be allowed to win so easily. In that strange, baffling process that occurs when the U.S. — but not Russia — is about to test nuclear weapons, the stop-the-tests hue and cry began to rise. A group that included Caltech's Chemist Linus Pauling and Britain's Philosopher Bertrand Russell brought suit in Federal District Court in Washington to enjoin Defense Secretary McElroy and members of the AEC from holding more nuclear tests. They promised to try to bring suit in British and Russian courts, too. Ban-the-bomb marchers in Manhattan and London got a joint four-column headline, two-column picture on Page One of the august New York *Times*—"PEACE WALKERS" SCORE NUCLEAR ARMS.

For all of its brave words in public, the Administration began shifting uneasily in private under the propaganda, considered an offer to negotiate an end to nuclear tests, with inspection, after the U.S. test series at Eniwetok. Even Secretary Dulles, who had argued that unwarranted U.S. concessions in the dangerous field of disarmament might weaken Western resolution, thought the time had come for second thought. At week's end President Eisenhower set in motion a review of the U.S. position on disarmament to be ready within three weeks.

THE SUPREME COURT

The Judges or the Congress?

In three related cases, the nine Justices of the U.S. Supreme Court last week wrote twelve separate opinions, split with a fundamental bitterness unknown since 1946, when Justice Robert Jackson began feuding in public with Justice Hugo Black. As it happened, last week's cases had to do with the right of the U.S. to deprive native-born Americans of their citizenship for such acts as desertion or voting in the elections of a foreign country. But in their sum and substance, the Supreme Court's unvarnished differences went to a far more basic point: the power of the judicial branch of government to overrule the judgment of the legislative branch.

Arnold Newman—LIFE

DISSENTER FRANKFURTER
For awesome power, restraint.

The issue was most clearly drawn in the case of Ohio-born Private Albert L. Trop, who escaped from an Army stockade in French Morocco in 1944, went over the hill, was picked up the next day, convicted of desertion and sent out with a dishonorable discharge. In 1952 he applied for a passport and was refused on grounds, clearly supported by a congressional act, that his desertion had cost him his citizenship. Chief Justice Earl Warren wrote the majority opinion, with Justices Hugo Black, William O. Douglas and Charles Evans Whittaker joining. William Brennan concurred. Felix Frankfurter, Harold Burton, Tom Clark and John Marshall Harlan dissented. The upshot: 5 to 4 in favor of citizenship for Trop.

Wrote Warren for the majority: "The judiciary has the duty of implementing the constitutional safeguards that protect individual rights. When the Government acts to take away the fundamental right of citizenship, the safeguards of the Constitution should be examined with special diligence." Added Warren: "In some 81 instances since this court was established, it has determined that congressional action exceeded the bounds of the Constitution. It is so in this case."

In the dissent, Justice Frankfurter said that to uphold the expatriation act "is to respect the actions of the two branches of our Government directly responsive to the will of the people and empowered under the Constitution to determine the wisdom of legislation. The awesome power of this court to invalidate such legislation, because in practice it is bounded only by our own prudence in discerning the limits of the court's constitutional function, must be exercised with the utmost restraint." He took special exception to Earl Warren's citing of the 81 times the Supreme Court has declared acts of Congress unconstitutional. That, said Felix Frankfurter, ad-libbing in his opinion, was not much to boast about—especially since a good many of those decisions had later been reversed by the court itself.

Close Call on Contempt

By weight of precedent, few principles in U.S. law should be better settled than the right of federal judges to enforce their orders and judgments by criminal-contempt penalties, assessed without juries. Yet last week the Supreme Court itself came perilously close to denuding the judiciary of its summary criminal-contempt powers. In 1789 the First Congress, following common-law practice, specifically granted federal courts the power "to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same." In 1890 the Supreme Court declared: "If it has ever been understood that proceedings . . . for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it."

In at least 40 cases the Supreme Court has upheld the judiciary's summary criminal-contempt power; indeed, it has been sustained by every Supreme Court Justice since 1874 except William Woods (1880-87), James Byrnes (1941-42), and some of those presently sitting. And during last year's fight on civil-rights legislation, the Congress even overrode bitter Southern opposition to give the courts limited powers to enforce voting rights with the criminal-contempt weapon.

"Anomaly in the Law." The case considered by the Supreme Court last week was that of top U.S. Communists Gilbert Green and Henry Winston, convicted under the Smith Act in 1949, each fined $10,000 and sentenced to five years in prison. After sentencing, both jumped bail and hid out for nearly five years. When they gave themselves up in 1956, they were sentenced to three more years apiece for their contempt of court in jumping bond.

The criminal-contempt convictions were upheld last week by the Supreme Court, but only by a 5-to-4 vote.

The majority opinion, written by Justice John Marshall Harlan, cited the overwhelming precedent upholding criminal-contempt convictions without juries. Justice William J. Brennan reserved his opinion on the constitutional points involved, dissented on the ground of insufficient evidence. But Hugo Black wrote a dissenting opinion for himself, Chief Justice Earl Warren and William Douglas, which struck at the foundations of the judiciary's enforcement powers. Wrote Black: "The power of a judge to inflict punishment for criminal contempt by means of a summary proceeding stands as an anomaly in the law . . . No official, regardless of his position or the purity and nobleness of his character, should be granted such autocratic omnipotence."

"Sinew of the Law." What Hugo Black and dissenting brethren did not concede was that by attempting to wipe out by judicial decree the principle and practice of centuries, they were arrogating to themselves a very real sort of omnipotence. That fact was pointed out in an opinion, concurring with the majority, by Felix Frankfurter: "To be sure, it is never too late for this court to correct a misconception in an occasional decision. [But] to say that everybody on the court has been wrong for 150 years and that that which has been deemed part of the bone and sinew of the law should now be extirpated is quite another thing. Decision-making is not a mechanical process, but neither is this court an originating lawmaker."

Closing the Book

The Supreme Court also closed the book on one of the last of the Truman Administration scandals last week, it refused to review the convictions of Matthew J. Connelly, appointments secretary to President Truman, and Theron Lamar ("Sweet Thing") Caudle, Assistant Attorney General in charge of the Justice Department's tax division. They were fined $2,500 and sentenced to two years in prison each for conspiring to fix a tax case during their days in power. Although Connelly and Caudle can ask the Supreme Court to reconsider, their chances are indeed remote.

CALIFORNIA

Death on the Pink Carpet

To her, men are like new dresses, to be donned and doffed at her pleasure. Seeing a fellow that attracts her, she's like a child looking at a new doll.

So wrote Hollywood Gossipist Hedda Hopper five years ago about the former Julia Jean Mildred Frances Turner, the former Mrs. Artie Shaw, the former Mrs. Stephen Crane (twice), the former Mrs. Bob Topping, the former Mrs. Lex ("Tarzan") Barker—better known to millions as Cinemactress Lana Turner. Lana Turner had a daughter, Cheryl, to whom she gave gifts, money, luxurious living, exclusive schooling—everything, in fact, except a normal upbringing.

Last week Cheryl Crane, 14 [illegible] tall, brown-haired and obviously an unhappy child, came home for Easter from Ojai's Happy Valley School—only to find her mother, Actress Turner, in the midst of trying to discard her latest male doll. But in this case the doll was not too easy to throw away: he was hairily handsome Johnny Stompanato, 32, a bum-around-Hollywood whose main claim to fame was a record as a pal of six-bit Gangster Mickey Cohen. Johnny and Lana had traveled Europe together, spent two months in Mexico. But upon their return Lana began, as a Beverly Hills cop delicately put it last week, trying to "discourage his attentions." Johnny Stompanato got downright annoyed.

Lana Turner, Stompanato & Daughter Cheryl*
At the foot of a commodious bed.

Last week Johnny Stompanato whisked up to Lana's Beverly Hills home in his Thunderbird, went raging in for a showdown. Cheryl Crane heard her mother and Stompanato arguing in Lana's bedroom. "I'll get you if it takes a day, a week or a year!" cried Stompanato. "I'll cut you up. I'll stomp you, and if I can't do it myself, I'll find someone who can." Frightened Cheryl went to the kitchen, picked up a 10-in. butcher knife, went to the bedroom. "You don't have to take that, Mamma," she said, and plunged the knife into Stompanato. He crumpled, fell dead on Lana's pink carpet at the foot of Lana's commodious bed.

Lana Turner called Jerry Giesler, Hollywood's favorite lawyer. Cheryl Crane called Restaurateur Stephen Crane, her father, whom Lana divorced shortly after Cheryl's birth. Then Cheryl went quietly off to the Beverly Hills police station. Lana Turner went with her, later returned alone to the big colonial house with the pink bedroom, where her wild sobs could be heard by people on the lawn out front.

Drenching Spring

Spring came to California in belting, pounding, soaking storms. They swept out of the icy land mass of Siberia, gathered fury and moisture over the Pacific, homed east and southeast along the jet stream, roared in around Marin County's Mt. Tamalpais in 100-m.p.h. gusts. In the first 3½ days of April, San Francisco got 3.96 in. of rain. Normal rainfall for all of April, 1.40 in. Rain cascaded down the city's spectacular slopes, spilled knee deep into downtown streets. On residential Mt. Sutro a strange sea of mud 100 ft. long and 25 ft. deep seeped toward a couple of apartment houses. In the tidelands community of Alviso, almost all of the 1,000 residents evacuated their homes before 4-to-8-ft. floods. Against four miles of coastline near Rockaway Beach, the ocean battered in mighty 40-ft. breakers.

Spring swept on across the state, wrenching at homes, uprooting trees, blocking highways and railroads, swelling rivers and streams and sogging levees to wrap up Northern California's wettest winter since 1890. In the majestic High Sierra the storms piled new snow into 20-ft. drifts, marooned 1,000 vacationers in ski lodges and Nevada state line gambling clubs, bogged transcontinental trucks straining across Donner Pass, treated 97 passengers aboard Southern Pacific's crack streamliner *City of San Francisco* to 30 hours of well-fed isolation in a snowbound snowshed near the pass.

In the irrigated Central Valley, spring soaked apricot trees, vineyards, alfalfa stands, tomato rows and the hopes of thousands of farmers. Sample casualty: the cotton grower, afraid that he would not be able to work his fields before the normal May 10 planting deadline; to

* On Lana's homecoming from Mexico last month.

Index: Supreme Court

(U. S. News & World Report, 12-19-58)
page 108

DID SUPREME COURT JUSTICES VIOLATE THEIR OATHS?

Have Supreme Court Justices broken "the law of the land" they are sworn to uphold? Here, prominent Washington lawyer, using the logic of the Court's own rulings, comes up with some startling conclusions.

The author, in active trial practice for more than 30 years, has been chairman of three important committees of the American Bar Association. He is a university teacher, and has written a number of books on legal questions.

by Hugh C. Bickford

Washington, D. C., attorney

In the latest school case [the Little Rock opinion given Sept. 26, 1958], the Justices of the Supreme Court have rationalized their stand by logical analysis.

At the outset of this revealing opinion the judges engaged in a bit of byplay which indicates that they are developing an inferiority complex concerning their own position. In the past, when the Court has handed down a decision, it has been the custom for one of the Justices to write the majority opinion. If this is not deemed necessary, the Court has simply stated "*per curiam*" [by the Court as a whole] and then set forth the ruling of the Court.

In the latest decision the judges adopted the peculiar method of listing the names of all nine Justices at the head of the opinion as if they sought to convey the idea that all nine men had jointly held the pencil that wrote the opinion. Then, in many places, the joint opinion emphasizes that all nine are unanimous.

It almost seems that the Court was trying to say: "The chief justices of the State supreme courts disagree with us; a growing number of lawyers disagree with us; a majority of the House of Representatives has expressed disapproval of our usurpation of power and the Senate let things stand by a margin of only one vote, but we—all nine of us—agree, and that alone makes it right."

But the most interesting part of the opinion is the attempt to support with logic the proposition that any decision of the Supreme Court must be supreme. In such logical analysis there is an inherent demonstration that the Court is wrong. Let us review this logic and apply the logic to its obvious end.

First, the Court stated that Article VI of the Constitution makes the Constitution the "supreme law of the land." From this the Court moves to Chief Justice Marshall's opinion in Marbury v. Madison, in which Chief Justice Marshall held that the Supreme Court was powerless to expand its own jurisdiction. Ignoring that portion of Marshall's opinion, the Court quoted only a portion of the decision which held that the judiciary was the branch of Government charged with "the duty of saying what the law is." From these premises the Court then arrived at the conclusion that "the interpretation . . . enunciated by this Court . . . is the supreme law of the land." Thus, the Court erected the following logical syllogism:

The Constitution is the supreme law of the land.

The Supreme Court has the duty of interpreting the law.

Therefore, the Constitution, as interpreted by the Supreme Court, is the supreme law of the land.

So far, many students of logic may well say that the reasoning of the Justices is valid.

The Justices then consider the duty of all State officers serving under the Constitution. First, it is pointed out that all State officers are required by Article VI to take a solemn oath to support the Constitution. From this premise, the Court moves to the stated premise that the Court's interpretation of the Constitution is supreme. Thereupon the Court erects the following syllogism:

All State officers, under the Constitution, take a solemn oath to support the Constitution.

The Constitution is what the Supreme Court says it is.

Therefore, all State officers are bound to support and defend the Constitution as interpreted by the Supreme Court.

Again, assuming the premises to be valid, many students will say that the conclusion is valid.

But if this logic applies to State officers, does it not also apply to the Justices of the Supreme Court and all federal officers, each of whom is required by the Constitution to take an oath to support and defend the Constitution?

When each of these Justices took their solemn oath prior to 1954, the Constitution contained the same words as it does today. Also, when they took their solemn oaths, the Constitution had been interpreted by the Supreme Court. Accordingly, in accordance with the Court's own logic, each judge solemnly swore to uphold the Constitution as it had been interpreted by the Court on the day he took his solemn oath.

When each of these Justices took their solemn oath, the Fourteenth Amendment had been interpreted on many occasions in a long line of decisions. Shortly after the Civil War, in the civil-rights cases and the slaughterhouse cases, the Fourteenth Amendment was held not to apply to individuals in civil matters but only to State governments in political matters.

In Plessy v. Ferguson (1896) the Court had first held that the word "equal" meant "equal," nothing more.

In 1927, Chief Justice Taft, on behalf of a unanimous Court, held as to Mississippi schools that "it is the same question which has been many times decided to be within the constitutional powers of the State legislature without inter-

. . . Congress shows "some stirrings of disbelief in the Court"

vention of the federal courts under the Federal Constitution."

In 1938, Chief Justice Hughes stated the opinion of the Court and said: "The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions"—Missouri v. Canada.

Accordingly, when the Justices who now sit on the Supreme Court took their solemn oaths of office, they made a solemn compact, in the presence of God, to uphold the Constitution as it had been interpreted by the Supreme Court at that time "without any mental reservations whatsoever." Can we not, therefore, apply the Court's own logical reasoning as follows:

The Justices solemnly swore to uphold the Constitution as it had been interpreted by the Supreme Court at the time they took office.

Such Justices have not upheld the Constitution as thus interpreted.

Therefore, the Justices have violated their oaths of office.

If the Court's logic is valid, the only proper rule is that, when the Court has once interpreted the Constitution, such interpretation becomes the supreme law of the land and that no man thereafter is justified in amending that supreme law unless the change is made by the people—from whom, alone, the authority of the Constitution flows. Of course, the historical basis for such a rule is the fact that, when a decision has been rendered interpreting the Constitution, the people have had the power to accept the interpretation or to overrule it by amendment.

How the Court Was Overruled

If they acquiesced a long time, the conclusion became clear that the people approved the interpretation. On the other hand, there have been outstanding instances when interpretations by the Court did not meet with the approval of the people and they did something about it.

In its first leading case, Chisholm v. Georgia, the Court interpreted the Constitution to mean that a private citizen could sue a sovereign State in the Supreme Court. The Eleventh Amendment was promptly passed to overrule the Court's interpretation. Again, in the Dred Scott case, the Court held that the validity of slavery continued even though the slave was taken into free territory. After a bloody civil war, the Court was overruled and the Thirteenth Amendment abolished slavery.

In 1896 the Court held that an income tax was unconstitutional; the people overruled that interpretation, adopting the Sixteenth Amendment.

No such objection was raised by the people to the interpretation of the Fourteenth Amendment established in the civil-rights cases and the slaughterhouse cases shortly after the War Between the States, nor was any serious attempt made to amend the separate-but-equal interpretation, which stood firm for over 60 years.

The supreme law of the land which most of the Justices swore to uphold was to the effect that "equal" schools were "equal" under the Fourteenth Amendment, that powers not clearly vested in the National Government remained in the States. Their constitutional duty was to defend the Constitution, as thus interpreted, against all enemies "foreign and domestic." Is not a person who violates his oath of office and seeks to amend the Constitution by illegal means an enemy of that Constitution? Apparently, the Court's venture into logic is no better informed than its previous attempt to justify its position by reference to sociology as a basis for law instead of established precedent.

Similarly, the same duty, as announced by the Court, applies to all other national officers who constitute the two other co-ordinate branches of the Federal Government.

Mr. Eisenhower seems to accept the proposition that, as President, he is an humble acolyte who must bow and knock his head on the floor in the presence of the Supreme Court. Such was not intended by the constitutional Fathers, who distrusted all men in office and expressly provided that each of the co-ordinate branches should be courageous defenders of the Constitution against each of the other branches. Washington, Jefferson, Jackson, Lincoln, Wilson and both Roosevelts had the courage to oppose the Court when it usurped power.

Eisenhower took a solemn oath to support and defend the Constitution, as it existed and was interpreted when he took oath in 1953. He has not done so. On each occasion when the Court has destroyed some part of the Constitution—in favor of some vociferous minority bloc; in favor of Communists; in favor of the destruction of the sovereignty and republican form of government of the States—he has meekly bowed his head and acquiesced.

When the history of the Eisenhower Administration is written, perhaps the lasting conclusion will be that it was during his Administration that the State governments were destroyed as federated States and all the power of government became concentrated in Washington. When it becomes thus centralized, the inevitable "man on horseback" will find it a simple matter to take over and rule as a despot.

Many Romans were satisfied when the popular soldier Julius Caesar took complete control, but it was only a few decades before Nero was wielding the absolute power that Caesar had erected.

In Congress there have been some stirrings of disbelief in the Messianic beliefs of the Court. The House voted to restrict the jurisdiction of the Court in limiting the powers of the States, but the Senate, forgetting their solemn oaths to uphold and defend the Constitution as interpreted when they took office, voted by a single vote to do nothing.

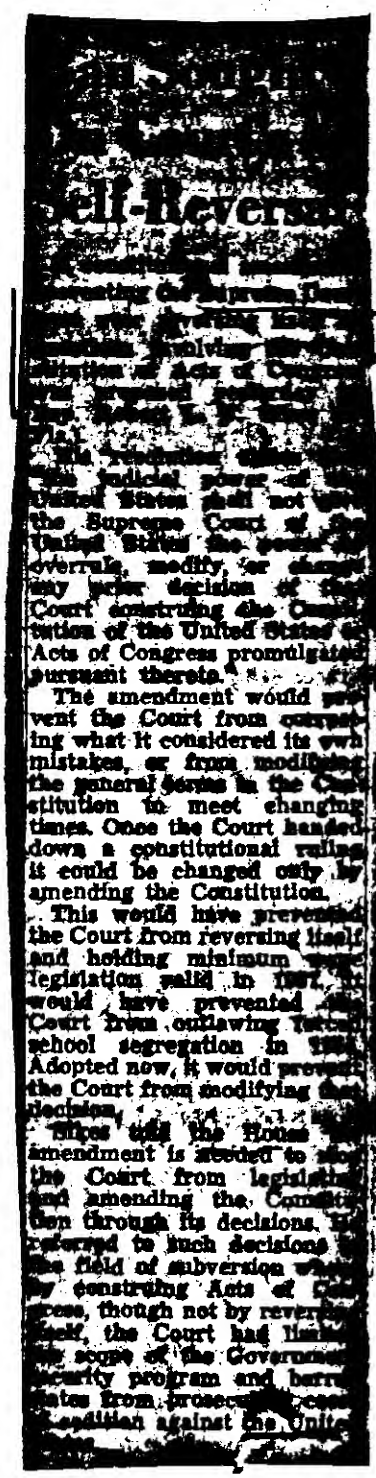
Roosevelt on Risk of Oligarchy

Franklin Roosevelt, in one of his greatest speeches, said:

"Now, to bring about government by oligarchy masquerading as democracy, it is fundamentally essential that practically all authority and control be centralized in our National Government. The individual sovereignty of our States must first be destroyed, except in mere minor matters of legislation. We are safe from the danger of any such departure from the principles on which this country was founded just so long as the individual home rule of the States is scrupulously preserved and fought for whenever it seems in danger."

Apparently, the executive and legislative branches are so busy seeking votes from organized minority blocs that they have overlooked the positive duty that rests on their shoulders to oppose any unwarranted extension of power by the third branch. They would do well to remember the solemn words of George Washington in his Farewell Address:

"If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed." (END)



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...judicial power of the United States shall not...the Supreme Court of the United States the power to overrule, modify, or change any prior decision of the Court construing the Constitution of the United States or Acts of Congress promulgated pursuant thereto.

The amendment would prevent the Court from correcting what it considered its own mistakes, or from modifying the general terms in the Constitution to meet changing times. Once the Court handed down a constitutional ruling it could be changed only by amending the Constitution.

This would have prevented the Court from reversing itself and holding minimum wage legislation valid in 1937. It would have prevented the Court from outlawing Federal school segregation in 1954. Adopted now, it would prevent the Court from modifying that decision.

Since only the States ... amendment is needed to stop the Court from legislating and amending the Constitution through its decisions. It reversed to such decisions ... the field of subversion where by construing Acts of Congress, though not by reversing itself, the Court has limited the scope of the Government's security program and barred states from prosecuting cases ... sedition against the United ...

Mr. Tolson
Mr. Belmont
Mr. DeLoach
Mr. McGuire
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

The Bar Takes the Court to Task

The resolution of the American Bar Association accusing the Supreme Court of going easy on Communists and calling on Congress to enact tough remedial legislation comes very close to giving full support to Southern contentions that in many areas the current Supreme Court has been playing fast and loose with the law.

ABA criticism of Supreme Court decisions is a startling action in itself. We can be sure that the resolution was not adopted before exhaustive and penetrating analysis of the situation—the ABA cannot be accused of being a hot-headed, radical organization. The resolution was passed because the organization feels the Supreme Court has dangerously weakened the nation's security by its ruling on 24 cases involving accused Communists or anti-subversive legislation.

By the same token, conservative, moderate spokesmen for the South have expressed alarm over the weakening of national unity caused by a Supreme Court decision on school segregation based not upon the law but on vague, controversial sociological considerations which could hardly even be classified as scientific.

We now have, therefore, the formal expression by one of the nation's foremost legal organizations, that criticism of the Supreme Court based on the Court's interpretation of the laws is certainly valid, legally and logically.

The specific Communist cases referred to by the ABA are certainly amazing. The Court has practically pulled the rug out from under the federal government in dealing with individuals dedicated to the overthrow of the United States.

In the case of the school segregation ruling, the Court relied on sociology in behalf of a "minority," (we dislike the word) to the complete disregard of the rights and prerogatives of which could be considered as another "minority." They boosted the "civil rights" of one group while trampling on the rights of another.

It is becoming increasingly apparent that Southern criticisms of the Supreme Court are sound and directed in the best interests of the nation as a whole.

John L. Sutton
Editor

SAVANNAH EVENING PRESS
Savannah, Georgia

Dated 3-26-59

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Criticism of the Court

by Raymond Moley

IN THE discussion over the American Bar Association's series of recommendations to Congress for legislation clarifying, limiting, and defining our protections against internal enemies and subversion, it was intimated that it is unwise to criticize not only the U.S. Supreme Court but any of its interpretations of the law. There are several good answers to this claim, some of which have been supplied by the Justices of that Court.

The statement adopted by the House of Delegates of the ABA specifically disclaimed any general criticism of the Court itself or any effort to limit the jurisdiction of that Court as defined by the Constitution. The recommendations of the House of Delegates aim to have Congress clarify its own laws and to assume the powers vested in it by the Constitution.

For the Constitution in Article II, Section 3, states that "In all the other cases before mentioned the Supreme Court shall have jurisdiction, with such exceptions and regulations as Congress shall make." The only cases in which Congress may not "regulate" are named in the same section and are not pertinent to the cases which were under consideration.

THE BAR'S RESPONSIBILITY

The bar in this instance is acting in its most significant role. A lawyer is something more than a plain citizen. He is by tradition and law an officer of the court and an agent of the government. To refrain from guidance would be to shirk the bar's responsibility, as a professional association, to the public and to government.

Among the recommendations which the House of Delegates has made to Congress, three are outstanding: The states should be permitted to enact and enforce laws to protect the nation and its citizens against subversion, and Congress should make clear that by enacting its own security laws it is not pre-empting the field; the Smith Act of 1940 should be amended and strengthened to include not only participation in organized subversive groups, but the advocacy of overthrowing the government, "or to teach the necessity, desirability, or duty of seeking to bring about such overthrow"; and Congress should continue its committees on internal security.

The ABA report points out the necessity of such legislation because of the serious consequences of various decisions of the Supreme Court. These, in the holy name of freedom, have seriously impeded efforts to investigate and legislate against subversive activity.

In the debate in Chicago over the ABA recommendations some pertinent evidence favoring the report was presented by Alfred J. Schweppe, a Seattle lawyer who has labored indefatigably for years to provide public leadership through the bar. His evidence consisted of statements made by Justices of the Supreme Court itself concerning the right and duty to subject the decisions of the courts to merited criticism.

VIEWS OF JUSTICES

Back in 1898, Mr. Justice Brewer stated in an address that many criticisms may be "devoid of good taste, but better all sorts of criticism than no criticism at all."

In 1941, Mr. Justice Black said in writing for the majority concerning a contempt case against The Los Angeles Times: "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion . . . an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Dissenting in the same case, Mr. Justice Frankfurter nevertheless said: "Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

The late Mr. Justice Jackson wrote in "The Supreme Court in the American System" that "criticism by the profession" is one of the important criteria in appraising a decision's "real weight in subsequent cases."

The Court is a responsible, human institution. To elevate it above criticism would be to create a tyranny above the law and above the government of which it is a part.

Index: Frankfurter, Felix -- Supreme Court

article "Frankfurter & Brandeis"

(American Mercury, Jan., 1959)
page 36

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FRANKFURTER & BRANDEIS

Steven Paulsen

We quote the following documents:

March 2, 1918

The Honorable
Louis D. Brandeis,
Associate Justice
Supreme Court of the United States.

Sir:

The Department is in receipt of a telegram from London under the date of March 1, 1918, stating as follows:

"VERY IMPORTANT TO PLACE ALL AVAILABLE FUNDS AT ONCE TO WEIZMANNS CREDIT.
FRANKFURTER"

I am, Sir,
Your obedient servant
For the Secretary of State:
ALVEY A. ADEE
Second Assistant Secretary

• • •

On March 2, 1918, Louis D. Brandeis cabled his nephew as follows:
"FRANKFURTER, LONDON
"YOUR AND WEIZMANNS CABLES OF 27th RECEIVED AND TODAY ONE FROM SOKOLOW WEIZMANN OF 28th EXPECT DEHAAS WILL CABLE SOME MONEY MARCH 4th AND THAT MORE WILL FOLLOW SOON DEHAAS HAS CONFIDENCE *ONE MILLION DOLLAR FUND WILL BE RAISED SOON* WILL REMIT FROM TIME TO TIME IN AMOUNTS OF FIFTY OR HUNDRED THOUSAND DOLLARS YOUR CABLE OF TWENTY SEVENTH CAME THROUGH PRIVATE WIRES I THINK IT WOULD BE ADVISABLE TO USE BRITISH WAR OFFICE GLAD TO KNOW COMMISSION LEAVES PARIS ON EIGHTH WILL CABLE YOU AS SOON AS MATTERS HERE CONCERNING UNIT AND OTHERS ARRANGED SOME DIFFICULTIES TO BE OVERCOME CABLE WHAT YOUR PLANS ARE
BRANDEIS"

• • •

Apparently the vast sums of dollars sent from the U. S. to Chaim Weizmann in London were being effectively used because Felix Frankfurter, from the Hotel Meurice, Paris, France, on March 5, 1918, wrote Mr. Brandeis:

"Weizmann . . . has a sway over English public men and over English permanent officials who will continue to govern England when Lloyd George and Balfour will be no more—such as no other Jew in

England or on the continent has or can easily acquire. His service has been a very deep one—not merely the political work of arousing the English to an understanding of their own interests but in educating the English mind to a felt understanding of what Zionism means.

"There is much personalia that I know would interest you but I have only time for a word or two. Lewis Strauss, calm and genial as ever has been the best possible help. Billy Bullitt—who just before my arrival had left for Russia . . . has aided us greatly, opening all the doors that needed to be opened."

On March 12, 1918, on the letterhead of the Embassy of the United States of America, Paris, France, Felix Frankfurter wrote Mr. Brandeis, and we quote as follows:

"The political work done by Weizmann has been nothing short of extraordinary and *his personal hold on the Government very powerful*. More than that he has created an opinion, an atmosphere for Palestinian matters that would affect any Government that might succeed Lloyd George.

"What needs to be done by his Commission is to create a *fait accompli* of social and economic and cultural life—at least in its foundations—which would render any Peace Conference impotent to undo an existing nationality.

"Weizmann has done this here practically singlehanded. He needs all possible support—and *money* is a tremendous leverage of prestige. He should have that plentifully."

THE ORIGIN OF THE BALFOUR DECLARATION

"The only way to induce the American President to come into the War I was to secure the cooperation of Zionist Jewry by promising them Palestine."

"President Wilson attached the greatest possible importance to the advice of Mr. Justice Louis Brandeis." *

* Christopher Sykes, son of Sir Mark Sykes, wrote a book, *Two Studies in Virtue*. Referring to the Balfour Declaration, on Page 183, Sykes let the cat out of the bag, and we quote: "He (Malcolm) then told Sykes of a very curious and powerful influence which Zionists could exert. One of President Wilson's closest advisors and friends was Justice Louis D. Brandeis, a Jew with a passionate Zionist faith of a recent convert. . . . That Wilson was attached to Brandeis by ties of peculiar hardiness, because, so the story ran, in his earlier days the future President had been saved by this man from appearing in a damaging lawsuit. It was said that Brandeis was regarded by Wilson as the man to whom he owed his career. . . . There could be no doubt that Brandeis was Wilson's intimate

advisor, and Brandeis was a Zionist. It followed that despite the Basch failure, a Zionist policy was in truth the way to capture American sympathy." Page 184. . . . Malcolm replied: "The Question is, do you want the help of the Jews in the United States? The only way you can get that help is by offering Palestine to the Zionists."

Mr. Wickham Steed (Editor, *London Times*) in his book, *Through Thirty Years* mentioned Sir Mark Sykes and Mr. Malcolm as the two individuals mainly responsible for the Balfour Declaration. The Zionists carried out their part and *helped to Bring America in.*

• • •

All of the above, by M. S. Landman—one of the top English Zionists—appeared in the February 7, 1936 issue of *The Jewish Chronicle.*

(A photostat of his whole article will be sent to those who send a contribution to MERCURY so we can mail our magazine to many people.)

Heretofore, MERCURY has printed some of the damaging facts about Felix Frankfurter. We quote a few of them:

"Theodore Roosevelt, who well knew that leopards do not change their spots, looked carefully at Felix Frankfurter in 1917, when Wilson began allowing Frankfurter to do his White House investigating and reporting of IWW disturbances. 'I agree with your criticism of the ridiculous creatures whom Wilson puts into office,' he wrote Senator Henry Cabot Lodge in August, 1917. 'Felix Frankfurter is an absurd misfit.'"

". . . In November 1917, . . . revolution-plotters of the International Workers of the World (IWW) had started riots among the copper workers in Bisbee, Arizona. The local sheriff and his deputies had rounded them up and tossed them over the Arizona State border. Legal Counsel Frankfurter's report to Wilson said that 'the right of free and unrestricted movement' of these IWW subversives had been infringed, should be restored, and recommended that such seizures and deportations from the State of Arizona should be 'dealt with as an offense against' the federal government.

"Theodore Roosevelt, following publication of this Wilsonian advisor's ruling sent Frankfurter a letter, on December 17, 1917, in which he minced no words: 'You have taken and are taking, on behalf of the Administration, an attitude which seems to me to be fundamentally that of Trotsky and the other Bolshevik leaders in Russia; an attitude which may be fraught with mischief to the country. . . . Your report is as thoroughly misleading a document as could be written on the subject. No official writing on behalf of the President, is to be excused for failure to know, and clearly set forth, that the IWW is a *criminal* organization. . . .

You (Frankfurter) are engaged in excusing men precisely like the Bolsheviks in Russia, who are murderers and encouragers of murder; who are traitors to their allies, to democracy, and to civilization, as well as to the United States.'" (Page 115-116, February, 1958)

The Carnegie Endowment was the last play in Alger Hiss' long, black record. "The rigged wheel suddenly went honest and Hiss was caught. Eventually he went to prison for the minor crime of perjury. . . . Even the appearance of *Supreme Court Justice Felix Frankfurter, coming full circle to testify as a character witness,* was unavailing. American juries are not easily awed, and the stink of treason was strong." (Page 20, June 1953)

"Felix Frankfurter is the third member of the (Supreme) Court who has served continuously throughout this period (since 1943). He participated in 72 cases and his record shows pro-Communist votes, 56; anti-Comumnist, 16." (Page 28, October 1958)

"Frankfurter informed friends that recognition (of Red Russia) was in the bag because in this matter, at least, he had the new administration in his vest pocket. . . . Hiss admitted that Frankfurter put him in" Westbrook Pegler, 1953. (Page 43, August, 1958)

When Warren came into power in the Supreme Court, he "lost little time in demonstrating that he was embarked upon a lone wolf career. Disregarding Republican advisers, he promply *made a confidant of Felix Frankfurter*, the shrewdest and most Machiavellian Democrat on the bench. Frankfurter, who was an original incorporator of the American Civil Liberties Union in 1921, had long been searching for a way to scuttle the whole body of security and anti-communist legislation which successive Congresses had placed upon the national statute books. He recognized that in Warren's gnawing ambition he had found his chance. Warren, himself, later told how Frankfurter made him feel at home on the Supreme bench, took him in hand socially and helped him to secure qualified assistants. (One of the Frankfurter hallmarks has always been to plant his own men in key positions under other top government executives. *One of them was Alger Hiss.*)" (Page 7, August, 1958)

What Do We Live For?

It is not enough for a man to say that he lives. The question is, what does he live for? From what source does he derive his inspiration? The wise man is he who identifies himself with his community and seeks to make it better. The person who thinks that the object of living is nothing but work must regard the workhouse or the prison as a stepping stone to the ideal. He should not have been born a man but a bee or an ant. We exist merely in a state of coma unless we be of service to mankind.—JAMES J. DAVIS

Index: Supreme Court

article: "What a State Chief Justice Says About the Supreme Court"

(U. S. News and World Report, 12-12-58)
page 88-93

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WHAT A STATE CHIEF JUSTICE SAYS ABOUT THE SUPREME COURT

From a noted jurist comes a warning about the U. S. Supreme Court.

A group of Justices, he says, is using judicial decisions to rewrite the Constitution.

The trend of their decisions is described as creating a dangerous concentration of power in Washington.

John R. Dethmers was chairman of the recent Conference of State Chief Justices which adopted a resolution criticizing the Court.

by John R. Dethmers

Chief Justice, Supreme Court of Michigan

The role of the courts in tomorrow's America is foreshadowed by their performance yesterday and today. Awareness of where we started, where we now are and the trends which brought us there brings prescience of our destination if those trends continue unabated.

In all history no other people has enjoyed the equal of American liberty and freedom of opportunity. The Founding Fathers planned it so. They determined that here the state should exist for man, not man for the state.

To achieve that end they knew it would not be enough to establish majority rule, a government by the people, for at times no other tyranny can match that of an unfettered, shifting majority, which Jefferson termed an "elective despotism." To safeguard against this eventuality a written Constitution was adopted, limiting the powers of the majority for the protection of the individual and spelling out guarantees of personal rights.

A further protection of human freedom against the dangers inherent in a high concentration of governmental powers was contrived by separation of those powers in three branches of Government and a division of powers between the national and State governments. The rights of the people were believed, by our forebears, to be safest under a retention of the highest possible degree of local self-government.

Having provided for this by express constitutional terms, they undertook to forestall an enhancement, through judicial construction, of the national powers at the expense of State and local governments or the people by adopting the Tenth Amendment reserving to the States and the people all powers not delegated to the United States by the Constitution nor prohibited by it to the States.

Sir William Gladstone said of the American Constitution that it is the "most wonderful work ever struck off at a given time by the brain and purpose of man." Throughout the years a great reverence for it has developed in the American people. They have come to regard it as the guardian of their liberties. What a thrilling experience it is to view the original document, under glass, at the National Archives Building in Washington!

The glow of that experience soon gives way, however, to the sobering thought that an inanimate parchment, however noble the sentiments inscribed thereon, cannot be self-executing. For that, some human agency is required. Lawyers and judges need not be told, but all too often laymen must, that it is the courts which breathe the breath of life into its provisions and make its guarantees meaningful.

How often, at the instance of the humblest citizen, have the courts upheld the constitutional rights and privileges of persons by denying validity and enforcement to legislative enactments violative thereof or by prohibiting the invasion or curtailment of them by administrative officials. The courts are the final bastion of our liberties. As in the past, so in tomorrow's America their role will be vital.

In the exercise of that all-important role, the courts proceed on no express constitutional authority. That they should do as they do is, however, implicit in Anglo-American jurisprudential tradition. How can courts decide cases before them involving some claimed right under a statute or some grievance flowing from official action unless they determine first the issue whether such statute or action squares with constitutional rights, guarantees or limitations?

When, some decades ago, Brazil desired to establish a new form of government, its people adopted a Constitution and, under it, established a federal union of States, both almost duplicating our own. Despite the similarity, while we have continued to enjoy government by the people, Brazil's history has been one of recurrent dictatorships. What was lacking in Brazil, but present here, to make the constitutionally guaranteed rights of the people effective? The answer appears to be the tradition here that courts may decide cases against the Government and for persons to enforce their rights.

A tradition such as this can survive only so long as it is sustained by public opinion. And it is so with the courts' decisions, upholding the constitutional rights of persons against infringement by Government. The courts are possessed of no armed constabulary to enforce their judgments. Their decisions are given vitality and effectiveness only by the force of public opinion, which even those in Government dare not, for long, to defy. There can be no doubt that, in past decades, the majority of the people has favored court decisions protecting the rights of individuals and has wanted the courts to perform in that fashion. Once the public becomes disinterested or withdraws its support, court decisions will lose their force and we will have witnessed the beginning of the end of ordered liberty and our free institutions.

One must experience some concern for our liberties, then, in noting an apparent diminution of public confidence in the

(Continued on page 91)

. . . "Outburst of criticism" of Court "cannot be ignored"

judicial process stemming from nation-wide attacks currently being leveled at our courts and, particularly, the Supreme Court of the United States.

This, of course, has happened before. It goes back, at least, to 1803 and the case of Marbury v. Madison, in which the Court declared its power to pass on the constitutionality of acts of Congress. Presidential wrath was incurred, congressional threats to impeach the Justices ensued, and it was vigorously asserted that each branch of the Government should determine for itself the constitutionality of its acts, without overlordship by the courts.

Then came McCulloch v. Maryland, announcing the doctrine of federal supremacy and the power of the United States Supreme Court to hold State action violative of the Federal Constitution. It was urged then that the Court be deprived of its power to review the acts of States.

The Dred Scott decision of a century ago is still remembered as a contributing factor to the furor which culminated in the Civil War. In the 1930s a hue and cry was raised against "the nine old men," traveling in the horse-and-buggy days, thwarting the will of a determined Chief Executive with respect to social legislation.

Present-day attacks, perhaps more virulent and widespread than ever before, emanate from a number of sources: from the halls of Congress, where it is felt that Court decisions have impinged on congressional powers; from States which see in the decisions a sapping of their powers and a gathering of them into the National Government; from sectional groups which view certain decisions as destructive of their social structures; and from persons everywhere who are fearful that decisions are enlarging the national power to constrict the rights of law-abiding people and, yet, are weakening our defenses against the enemies of our free institutions. Whether justified or not, these feelings, beliefs, views and fears have produced a combined outburst of criticism which cannot be ignored.

With the criticism have come proposals to curb the Court. These go to the very roots of our system. One would make the Justices subject to periodic reconfirmation by the Senate and another would empower the Senate to withdraw confirmation whenever the judicial work of a Justice does not comport with the Senate's views as to what is "good behavior," fixed by the Constitution as a condition to continued tenure.

Lost would be judicial independence and destroyed our system of checks and balances between the three branches of Government, leaving a Court dependent on legislative favor and approval for performance of its role as protector of the rights of the people against governmental encroachment.

Limiting the "Power of Review"

By another measure, Congress would strip the Supreme Court of the power of review in several areas of the law. If the powers of the Court to determine constitutional questions were, thus, to be limited, the constitutional rights of individuals and minorities could be made to depend on the will of the majority as reflected in Congress. That would mark the beginning of parliamentary, and the end of constitutional, government in the United States.

In view of the unlikelihood of success for such proposals, however, it must be concluded that, for our liberties, the most serious consequence of the present controversy inheres in the unbridled attacks on the intelligence, integrity and motives of the Justices and on the Court as an institution of Government. Subversives and those bent on the destruction of our system have as a prime objective the undermining of public confidence in the courts, knowing full well that, without the support of public opinion, courts can avail nothing in defense of the constitutional rights of persons. As earlier observed, when that day comes we will have reached a parting of the ways with our cherished freedoms.

In warning of the dangers of intemperate attacks on the Court as an institution of government and the guardian of our liberties, I do not suggest that the Court's decisions may not be criticized or differences therewith expressed. Dissenting members of the Court do so with apparent relish and regularity. Citizens under a government by the people may and ought to do no less, if that system is to be maintained. That was a major object of the First Amendment guarantee of freedom of speech, designed to insure a Government sensitive and responsive to the expressed public will and wish.

On this subject, Mr. Chief Justice Stone said:

> "I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their actions and fearless comment upon it."

State Judges' View of Court

This brings us to consideration of that portion of the subject matter which, I apprehend, prompted the invitation to me to speak on this occasion. As is well known, the Conference of Chief Justices, assembled in Pasadena last August, adopted a report prepared by its Committee on Federal-State Relationships as Affected by Judicial Decisions.

At the outset, permit me to make these observations:

1. Neither that committee, its report or the conference presumed then, nor do I now, to criticize the Supreme Court's decisions in the troublesome segregation cases.

2. It was not questioned that, with government under a Constitution made by its own terms the supreme law of the land, someone must interpret that Constitution and declare its meaning. It was acknowledged, and I reiterate with conviction, that no body is better suited to the task than the Supreme Court and no process is better adapted than the judicial process to the function of determining constitutional meaning and making constitutional limitations and guarantees effective.

3. The conference's expressed alarm, and mine, at the noticeable trend toward increased national powers accompanied by a diminishing of the powers of States and local governments relates not to mere sectional or selfish interests but springs from the same concern as that of our Founding Fathers that liberty's cause may be lost in too high a concentration of powers in the National Government, and from the conviction that safety for the rights of man inheres in a diffusion of those powers and maintenance of the highest possible degree of local self-government compatible with national security and well-being.

So long as we adhere to the determination of the Fathers that the state, the Government, exists for man and not man for the state, our lodestar in the consideration of every proposed extension or withholding of governmental power must always be, "How will the cause of freedom best be served, how the rights of man advanced?"

That there has been a trend toward centralization in Washington can scarcely be gainsaid. Challenged at mileposts along the way, it has advanced under the green light of judicial decisions. Time will not permit mention of them all nor a thorough analysis of any. The first relates to the rule long adhered to by the Court and redeclared as recently as 1936

. . . "National powers are being dangerously enlarged"

that neither the federal nor State government may tax the income of officials or employes of the other, on the principle that a tax on income is a tax on its source and that the one Government may not levy a tax which will impose a burden on the governmental activities of the other.

This was overruled by a 1938 decision. That a burden was imposed upon the States by this judicial change in the law is evidenced by the subsequent necessity for increasing the salaries of State employes in an amount commensurate with the resultant tax exaction.

Of more recent vintage is the Supreme Court holding that Congress has pre-empted the field, leaving no room for the State antisubversive laws found in the statute books of 42 States, and a companion decision emasculating a State statute empowering its attorney general to investigate subversion and examine witnesses in that connection.

Two others upset State action denying admission to the bar to two applicants who refused to answer questions concerning Communist affiliation. Lawyers are officers of the State courts, admitted by them and under their control. The manner of this recent invasion of that relationship by the federal court has proved startling to members of the bench and bar as well as the public.

Ruling Against a School Board

Equally disturbing to those concerned about local government is the action of the Supreme Court upsetting a local school board's dismissal of an employe for invoking the Fifth Amendment and refusing to answer questions put to him in an authorized inquiry concerning Communist activities.

A number of fairly recent cases construing the interstate-commerce clause disclose a judicial shift from the original position that the regulatory power of Congress extends only to goods moving and persons actually engaged in interstate commerce. The later holdings are that that control extends to anything or anyone engaged in that which affects interstate commerce. Accompanied by new decisions applying the pre-emption doctrine also to the field of labor relations, the *result is that we now find national action controlling*, and State action excluded, where formerly the Court had held, either directly or in effect, to the contrary, namely in such areas as production or processing of goods before entering commerce and, as well, after having come to rest following movement in commerce.

The Court also upset a long line of its decisions by holding in 1944 that the writing of insurance is commerce subject to federal control under the commerce clause. Thereafter Congress passed an act restoring a measure of State control over the industry. Then, there is the case holding, in effect, that a farmer's raising of wheat for consumption on his own farm is commerce, subject to federal regulation.

Federal law even has been held to extend to the relations between a local automobile dealer and his repair-shop employes, excluding the power of State courts, acting under State law, to enjoin unlawful picketing designed to compel the employer to force his employes into a union.

A State statute aimed at preventing strikes and lockouts in public utilities has been upset, leaving States powerless to protect their own citizens against emergencies resulting from suspension of essential services, even though such emergency be economically and practically confined to one State.

Even the employment of a window washer in a building in which office space is leased by a tenant engaged in interstate commerce may, by reason of the latter fact, be subject to federal labor law to the exclusion of State control.

Interpretation of the Fourteenth Amendment has opened up whole new vistas for federal judicial review of criminal convictions in State courts, in a manner and to an extent until recently unknown to legal and judicial thinking in this country and with interminable resulting delays in bringing the wrongdoer to final justice. State convictions may be and now are upset in Washington for too-speedy justice, for non-appointment of counsel for the defense, for failure to provide the accused, on appeal, with a transcript of the trial at public expense, etc.

As the ambit of federal judicial authority is thus constantly widened, we may get a glimpse of things to come. Already in lower federal courts, it has been urged and those courts have considered whether a State law prohibiting public employes *from belonging to unions is violative of the due* process, privileges-and-immunities and equal-protection clauses of the Fourteenth Amendment or abridges the freedom of expression and association guarantees of the Federal Constitution; or whether treaties of the U. S., made by the Constitution the supreme law of the land, may supersede State and local law governing matters of local concern; or whether a State may proceed with removal proceedings against the mayor of one of its cities for malfeasance while criminal proceedings on the same grounds are pending against him.

These are part of the body of decisions giving rise to a concern that, by judicial construction, national powers are being too greatly and dangerously enlarged and State and local power correspondingly contracted. Of this trend, the Conference of Chief Justices and many others have spoken with consternation. Great judicial self-restraint in this critical field of federal-State relationships was enjoined upon the Supreme Court by the members of the conference. I concur.

If Jefferson were to reappear on the American scene today would he feel impelled to say, "I told you so," pointing to his language of 1823:

". . . there is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court."

Why Court Decisions Change

What, you may ask, accounts for this change in judicial holdings with its resultant change in federal-State relationships? If, as commonly supposed, courts follow precedents how can these latter-day decisions be explained? In this connection, comments of Mr. Justice Owen J. Roberts in 1944 are pertinent. Said he:

"I have expressed my views with respect to the present policy of the Court freely to disregard and to overrule considered decisions and the rules of law announced in them. This tendency, it seems to me, indicates an intolerance for what those who have composed this Court in the past have conscientiously and deliberately concluded, and involves an assumption that knowledge and wisdom reside in us which was denied to our predecessors. . . .

"The reason for my concern is that the instant decision overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only."

At root of the problem is a difference in concept of the proper function and role of the Supreme Court. The Court is divided into two competing judicial philosophies. Let us examine a bit of the thinking of each.

First, there is the language of John Marshall, who said:

"Courts are the mere instruments of the law, and can will nothing. . . . Judicial power is never exercised for the

. . . "People must make final judgments" on Court's role

purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."

Mr. Justice Frankfurter recently wrote:

"The Constitution is not the formulation of the merely personal views of the members of this Court. . . ."

Mr. Chief Justice Hughes said:

"Extraordinary conditions do not create or enlarge constitutional power."

The great constitutional authority, Judge Thomas N. Cooley wrote:

"What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it."

Similar views often were expressed by the Court in the past. So, in 1889, it said of the object of constitutional interpretation that it "is to give effect to the intent of its framers, and of the people adopting it." In 1905, the Court declared:

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. . . . Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded."

In 1936, Mr. Chief Justice Hughes wrote:

"If the people desire to give Congress the power to regulate industries within the State, and the relations of employers and employes in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision."

These statements are expressive of the traditional concept of the rule governing Court construction of constitutional provisions, held by an earlier Court and perhaps still shared by some of its present members. This represents the doctrine of judicial restraint.

Theory of a "Political" Court

In opposition are those on the Court, with disciples notably among the writers and professors of law, dedicated to judicial activism. The theme of this group has been succinctly stated by one of the professors. It is this, "The Court cannot escape politics; therefore, let it use its political power for wholesome social purposes." They seize upon the statement of Hughes, in his 1907 Elmira speech, that the Constitution is what the judges say it is. Can it be concluded from this that the Constitution may be made, by judicial fiat, to mean whatever the Justices want it to mean?

That was not the import of the Hughes statement or speech nor does it comport with his judicial writings. It is the position of the judicial activists that the Court is free to interpret the Constitution in the light of current philosophies, psychology and political and social doctrines regardless of the original intent of its framers and adopters. One of the Justices of this group has written, "*Stare decisis*,"—that is, the rule of following precedent in the decision of cases—"must give way before the dynamic components of history."

The dean of a noted law school has written:

"It will not do to say that, in construing these provisions of the Constitution, the Court should be limited to the meaning the terms had when they were written. . . . The scope and meaning of the provisions of the Bill of Rights evolve, like the meaning of other constitutional terms, and other terms in law. They are stages in the organic process by which ideas flourish or languish as new generations find for themselves new and valid meanings for the old words."

The late Professor Thomas Reed Powell wrote of the differing approach to the law of the two schools of thought, that the difference between them is in their conceptions of the proper scope of the judicial function, the one having a leaning for getting the result in the particular case as if it were a legislative choice, but the other, on the contrary, having a leaning to respect the outlines and many of the details of an established legal system.

Gentlemen, in our consideration of the role of the courts in tomorrow's America we have noted, as suggested at the outset, the place of our constitutional beginnings and our present position, observed trends which brought us there, and gained a glimpse of the destiny to which their continuation may bring us. Shall the trends be continued, retarded or arrested? Shall it be held again, as the Court once said, that "The Constitution, in all its provisions, looks to an indestructible union of indestructible States"?

Threat to "Personal Rights"

You, the American people, must make the final judgments on these matters. As you do, mark well what the philosophy of the judicial activists may portend for the liberties of the people and our free institutions. If the Court is to have wide latitude in determining constitutional meaning and, as some suggest, may find it elsewhere than in the language of the Constitution itself or may ascribe a new meaning thereto not intended by the framers; if, as urged, the Court is to exert a political power to achieve the social ends it deems expedient, what will remain of constitutional restraints on Government and constitutional guarantees of personal rights and liberties?

Shall not these be left, then, to the whim and caprice or, at best, the good intentions of men, be they judges, legislators or administrators of the law? It was not for this that our forefathers fought nor for this they framed the Constitution and its Bill of Rights.

One of the chief responsibilities of citizenship, essential to survival of a government by the people, is to become informed about government, to arrive at conclusions, form convictions, and then make a worthy contribution to the great body of public opinion which ultimately makes itself felt in the halls of Government. So, if perchance there be courts with ears to the ground, even there may the voice of an informed people be heard. Thus may the issues here considered be resolved and thus may government and constitutional rights in the future be what you, the people, want.

Let me conclude with a repetition. If the courts are to continue performing their greatest role of preservers of the people's liberty and freedom, they must have the support of an informed and understanding public opinion. As Charles S. Rhyne, immediate past president of the American Bar Association, has said: "Our system of government is no stronger than our courts, and our courts are no stronger than the strength of the public's confidence in them." There is no greater claim on citizenship. Gentlemen, an awesome obligation is yours. The role of the courts in tomorrow's America, and the future of America itself depend on what you and Americans everywhere do about it.

Foregoing is full text of an address by Justice Dethmers before the Congress of American Industry in New York City, Dec. 3, 1958.

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EDITORIAL PAGE

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[redacted] protection that Communists receive under our laws and their ability to use our laws and our institutions to damage this country.

There are recommendations by the American Bar Association which will undoubtedly influence the opinion of lawyers throughout the United States, particularly those which are critical of the Supreme Court's recent Communist decisions and call upon Congress to pass legislation to correct them.

[redacted] what will have a still greater influence than the resolutions is the 57 page brief which goes to the heart of the subject, which piles fact upon fact, and which makes only so thorough a case against the Communist use of our laws and institutions that even the left wingers in the American Bar Association found themselves silenced before the shifting array of indisputable data.

This brief states:

"The paralysis of our internal security grows largely from construction and interpretation centering around technicalities emanating from our judicial process which the Communists seek to destroy, yet use as a refuge to masquerade their diabolical objects . . ."

The majority in the Supreme Court choose to ignore the world in which they as well as we live. It prefers judicial dogmatism to a realistic appraisal of the danger in which this country finds itself. National security has been weakened by Supreme Court decisions in such cases as Pennsylvania v. Steve Nelson, Communist Party U.S.A. v. Subversive Activities Control Board, Watkins v. U.S., Cole v. Young, Jencks v. U.S., and about a dozen more cases, most of them between 1956 and 1958; that is, since Earl Warren became Chief Justice of the United States.

The difficulty is that the United States Supreme Court—that is, the majority—ignores the fact that this nation is at war—a cold war at present—with Soviet Russia and that that country maintains a fifth column and an espionage organization in this country which must be rooted out.

The report calls attention to facts which the Supreme Court has ignored:

"The Communist master plan for world conquest has been outlined by both Lenin and Stalin as entailing the violent smashing and overthrow of all non-Soviet governments, including those of Great Britain and the United States. Prior to this overthrow and to prepare for it in each instance, the Communist Party is to make 'transmission belts' of all possible non-party agencies for the diffusion of the Communist line, weakening the country to be overthrown. Already this has become an historical fact to which once free peoples now enslaved, can testify. Need we have more evidence of Soviet intent?"

Laws have been passed by Congress to [redacted] means to lessen the effectiveness of Communist [redacted] activity in the United States. The Supreme Court [redacted] led many of the steps taken against the Communists [redacted] doubtedly on the supposition that the Communist Party [redacted] something like the Populists or Father Divine's Peace [redacted] maybe a high school debating society. The learned justices fail to recognize the nature of the [redacted] vus utilization of our laws and institutions to do away [redacted]

They now have a brief which can guide [redacted] right direction. It ought also guide Congress toward [redacted] tion which will correct the non-judicial dogmatism [redacted] scholarly justices.

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Mr. Tolson
Mr. Boardman
Mr. DeLoach
Mr. McGuire
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
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Mr. Holloman
Miss Gandy

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IMPORTANT:

Court Not Beyond Criticism

Author of the following analysis of the Supreme Court of the United States is Alfred J. Schweppe of Seattle, Wash. Mr. Schweppe is a distinguished and nationally known lawyer and author of legal articles of widely recognized worth. Early in his career he taught constitutional law and has served on various important judicial bodies.

SO MANY PEOPLE have asked me for the quotations which I used in Chicago before the House of Delegates of the American Bar Association during the debate on criticism of the United States Supreme Court in connection with the Report of the Committee on Communist Tactics that I reproduce them herewith:

Mr. Justice Brewer in his Lincoln Day Address, 1898, (15 Nat. Corp. Rep. 848, 849) said:

"It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the objects of constant watchfulness by all, and its judgments subject to the freest criticism. The time is past in the history of the world when any living man or body of men can be set on a pedestal and decorated with a halo. True, many criticisms may be, like their authors, devoid of good taste, but BETTER ALL SORTS OF CRITICISM THAN NO CRITICISM AT ALL. The moving waters are full of life and health; only in the still waters is stagnation and death."

In Bridges V. California, 314 U. S. [illegible] (1941)—the Los Angeles Times contempt case—Mr. Justice Black, writing for the majority, said:

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H. L. Edlbacher

"THE ASSUMPTION THAT RESPECT FOR THE JUDICIARY CAN BE WON BY SHIELDING JUDGES FROM PUBLISHED CRITICISM WRONGLY APPRAISES THE CHARACTER OF AMERICAN PUBLIC OPINION. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

In the same case Mr. Justice Frankfurter, though dissenting on other grounds, agreed with this basic concept in the following words:

"Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. THEREFORE JUDGES MUST BE KEPT MINDFUL OF THEIR LIMITATIONS AND OF THEIR ULTIMATE PUBLIC RESPONSIBILITY BY A VIGOROUS STREAM OF CRITICISM EXPRESSED WITH CANDOR HOWEVER BLUNT."

And he then fortified his statement by quoting Mr. Justice Brewer's 1898 Lincoln Day Address as above quoted.

The late Mr. Justice Jackson, who rendered many valuable services as a member of the American Bar Association to the date of his untimely death, in his last book "The Supreme Court in the American System" (Harvard University Press, 1955) affirms the essentiality of professional criticism. See for example, the quotation reprinted in the February, 1958, issue of the American Bar Association Journal, page 189, in which he singles out "acceptance or criticism by the profession" as one of the important criteria in appraising a decision's "real weight in subsequent cases."

In his recent "The Supreme Court [illegible] Taft to Warren," (Louisiana [illegible] versity Press, 1958) Alpheus Thomas [illegible] son biographer of Mr. Justice Stone, says:

"The justices themselves have been less anxious to black out knowledge of the Court's activity than are certain of its self-appointed protectors.

"In 1930 Justice Stone was quite undisturbed by the close scrutiny the Senate gave Mr. Hughes's nomination. Stone regarded it as evidence of 'wholesome interest in what the Court was doing.' 'I have no patience,' the justice commented, 'with the complaint that criticism of judicial action involves any lack of respect for the courts. WHERE THE COURTS DEAL, AS OURS DO, WITH GREAT PUBLIC QUESTIONS, THE ONLY PROTECTION AGAINST UNWISE DECISIONS, AND EVEN JUDICIAL USURPATION, IS CAREFUL SCRUTINY OF THEIR ACTION AND FEARLESS COMMENT ON IT.' Stone was not horrified in 1937 when President Roosevelt went on his court-packing spree. Then, as in 1923, he believed that even the unjust attacks on the Court had left 'no scar,' that 'the only wounds from which it has suffered have been self-inflicted.'"

The severest critics of the court's majorities over the years have been its dissenting members, whose rights and duties in this respect do not differ from those of any member of the bar or of the American public.

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Understanding the Court

[illegible] to criticize the Supreme Court for its desegregation decisions would do well to study the thoughtful views expressed recently by Solicitor General J. Lee Rankin. The Solicitor General has contributed immeasurably to an understanding of the reasoning processes behind the Court's conclusion. Many critics of the Court will not agree with his view, but everyone who pretends to debate this issue ought to inform himself as to what alternatives were open to the Court and what impelled the Court to the course it took.

Mr. Rankin recognized that the phrase "equal protection of the laws," like "liberty" and "the general welfare of the United States," is of "convenient vagueness." The authors of the Fourteenth Amendment were aiming at racial discriminations by the states in a very general way. They left it to Congress and the Supreme Court to put meaning into the Amendment and not, as Mr. Rankin noted, "to take it out." If the Court did not interpret these vague phrases in accord with the increasing public awareness of liberty and equality of rights, the Constitution would soon become a dead relic instead of a legal guide to the future.

It is also important to remember that the Fourteenth Amendment, in its application to racial discriminations, had undergone a long "line of growth"—in the words of Justice Holmes—before the segregation cases reached the Court. Following this line of growth, as traced by the Solicitor General, it is difficult to see how the Court could have avoided its desegregation decision without suddenly reversing the course it had begun years before.

According to Mr. Rankin three possible courses were open to the Court. It could have followed the separate-but-equal doctrine of *Plessy v. Ferguson*. But the Court had a duty, the Solicitor General insisted, to reexamine the validity of that doctrine "in the light of later experience, greater wisdom and understanding." When it did so, it could not reconcile that doctrine either with the Court's more recent decisions or with the more acute national consciousness of civil rights that existed in 1954.

[illegible] open by [illegible] tor General noted, [illegible] in conflict with the Court's [illegible] specific meaning [illegible] the amendment's [illegible] tion. The third course open to the Court was the one it chose, striking down segregation in the schools "with all deliberate speed." [illegible] much criticized words, Mr. Rankin pointed out, were derived from the English courts of chancery which used them "to meet the needs of justice in cases before them where flexibility and adaptability to varying circumstances are required."

The decision for which the Supreme Court has been so vehemently denounced is unquestionably in line with its great national service of protecting the rights of the people. Critics who continue a campaign of abuse against the Court might well contemplate this thought thrown out by the Solicitor General:

> We would be shocked to learn that the Court had been reached by bribes or other approaches by interested parties either within or outside the Government, but long continued, public attacks may cause an even more serious damage to the Court although it be an insidious and indirect effort to affect its judgment.

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ON FEDERAL RIGHTS

Ruling on Double Jeopardy Reflects A Long-Enduring Division

By ANTHONY LEWIS
Special to The New York Times.

WASHINGTON, April 4—A deep and enduring philosophic division in the Supreme Court was illuminated this week by a pair of decisions that went as far as any recent cases toward disclosing the inner compulsions of the present justices.

The cases defined the extent of the Constitution's guarantee against double jeopardy. Six of the justices took the view that, consistent with the Constitution, a state and the Federal Government may successively prosecute the same man for the same criminal act. Three justices took the opposite view.

The principal opinions were written by the two senior justices who for many years have led the opposing views within the court of what its role should be. It was Justice Felix Frankfurter for the majority, Justice Hugo L. Black dissenting.

The Division

Justice Frankfurter wrote the opinion affirming the Illinois conviction of a robber of a savings and loan association who had previously been acquitted by a Federal jury of the same robbery. Joining Justice Black in dissent were Chief Justice Earl Warren and Justice William O. Douglas.

The Frankfurter opinion dealt at length with precedent—cases related to though not exactly covering this one. But his central theme was federalism, the division of authority and responsibility in the American system between state and Federal sovereigns.

To say that a Federal prosecution constitutionally bars any future state trial, Justice Frankfurter wrote, would permit the displacement of the states from their primary responsibility to fight crime. His strong words were "a shocking and untoward deprivation of the historic right and obligation of the states to maintain peace and order within their confines."

Complicated Problem

The opinion of the court went on to say that many states had adopted statutes barring a prosecution if the defendant has been tried for the same crime elsewhere. Justice Frankfurter concluded that the problem was a complicated one better dealt with by state legislatures in the light of unfolding experience than by the Supreme Court.

To Justice Black the problem was essentially one of individual rights and not of governmental powers. He wrote:

"The court apparently takes the position that a second trial for the same act is somehow less offensive if one of the trials is conducted by the Federal Government and the other by a state. Looked at from the standpoint of the individual who is being prosecuted, this notion is too subtle for me to grasp. * * *

"The court, without denying the almost universal abhorrence of such double prosecutions, nevertheless justifies the practice here in the name of 'federalism.' This, it seems to me, is a misuse and desecration of the concept. Our Federal Union was conceived and created 'to establish justice' and to 'secure the blessings of liberty,' not to destroy any of the bulwarks on which both freedom and justice depend."

Those opposing views in the double-jeopardy cases were merely the latest expression of themes sounded again and again by Justices Black and Frankfurter in their more than two decades on the court.

[redacted] and the Bill of Rights [redacted] major influence in the [redacted] Frankfurter philosophy, [redacted] them on the ground, among others, that states should be free to experiment within a Federal system.

Freedom for government to experiment remains a cardinal principle with Justice Frankfurter, even when the subject at hand is termed "individual rights" rather than "economic regulation."

The justice is deeply uneasy about the idea of nine lifetime appointees tieing the hands of the political branches of government by what he fears may be absolutist interpretations of the Constitution. Mixed with this view is his great respect for the Federal system, his feeling that issues should be decided at the local level rather than by a court in Washington.

For Justice Black, great government power in the economic area—a power he recognizes no less than Justice Frankfurter—has nothing to do with government action restraining individual liberty.

He sees the Constitution and

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the court as absolute guardians of such rights as free speech, freedom from self-incrimination, and jury trial. In these areas he sees no necessity, as does Justice Frankfurter, to weigh the needs of government against those of the individual, because he believes the Constitution has decided in favor of the individual.

Deep Feelings

The depth of feeling behind the opposing views was made clear in the courtroom last Monday. Justices Frankfurter and Black, elaborating on the written opinions in their oral statements, exchanged acid comments on each other's words. The audience felt the emotions involved.

Indeed, there is some feeling among close observers of the court that the double-jeopardy opinions on both sides may be an example of pressing strong views to unnecessary extremes, of fighting old fights for the sake of argument.

There are those who feel Justice Frankfurter's opinion takes rather a conceptual view of "government," treating it almost as an abstraction, not as a servant of individuals in society. His view of state and Federal governments as "two sovereignties," entirely separate, has been much criticized by political philosophers.

And there are portions of the Black opinion that can fairly be called overstatement, it is held by some observers here. For example, a forecast that prosecutors will use the power to try a second time "to make scapegoats of helpless political, religious or racial minorities and those who differ, who do not conform and resist tyranny."

None of this is to suggest that the division on the court involves personal animosity. It does not. These are intellectual differences, though going to the justices' most basic assumptions about society. Nor should the differences obscure the large degree of unanimity on the Supreme Court on such matters as racial discrimination or fairness of government procedure.

But this week's decisions show that the division over the role of the court in some questions of personal liberty remains.

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Court Critics Said Using Red Peril as Subterfuge

Lawrence E. Walsh asserted yesterday that some of the loudest critics of the Supreme Court are using the Red issue as a subterfuge in an effort to maneuver to change the law in other fields.

Walsh termed the issue [illegible] in speech to the American College of Trial Lawyers in Miami. But it was obvious from cases and writs cited that he was including Congressmen like Rep. Howard W. Smith (D-Va.), who has justified his broad states-rights bill HR-3 as a means of letting states enforce their sedition laws.

In the Steve Nelson case the Supreme Court unanimously upheld the Pennsylvania Supreme Court by ruling that Congress had preempted the field of prosecuting sedition against the Federal Government by passing the Smith Act. This meant the states could not act.

Goes Beyond Sedition

Urging reversal of the Nelson decision as justification, Smith pushed through the House his bill which went far beyond sedition and said the states could act in any field unless Congress specifically forbade it or unless their laws were contradictory. The bill was retroactive. It passed the House easily and is moving ahead this year despite opponents' statements that it may strike down a century of uniform Federal regulation in many fields.

If the Supreme Court had misjudged the intent of Congress in the Nelson case, said Walsh, a "simple amendment" would have restored the state [illegible] partment proposed [illegible] amendment to the [illegible] Congress and [illegible] [illegible] passed [illegible] said Walsh, because [illegible] the groups who [illegible] the leaders of the [illegible] attack on the [illegible] sections of Congress [illegible] concerned with [illegible] tives. They prefer to [illegible] issues of communism [illegible] support for an ambiguous general bill (HR-3) which they hope might reestablish state regulation in other fields like the regulation of labor disputes in which Congress would be unlikely to pass an outright specific amendment to the law."

Bill Called Ambiguous

Walsh called Smith's HR-3 "so ambiguous" that no one knows exactly what it is intended to do or [illegible]. Since it is retroactive, he said, this is a "matter of grave concern to every lawyer whose clients have been led to believe . . . that compliance with Federal regulations precluded them from compliance with state laws regulating the same fields."

"The point is," said Walsh, as he urged the lawyers to defend the courts from attacks that the Nelson decision, which has been used as justification for an epithetic attack upon the Court," could have been reversed by a narrow bill which has been blocked. "The Court is thus being unfairly exposed to attack grounded on our fear of communism as part of a maneuver to change the law in other fields."

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Dirksen Sees Full OK for Justice Stewart

Senate Republican Leader Dirksen predicted today that the nomination of Justice Potter Stewart to the Supreme Court will be approved unanimously by the Senate Judiciary Committee early next week.

The committee concluded its public hearings late yesterday but deferred a vote pending a subcommittee study of a last-minute protest by James M. Burke of Baltimore.

Mr. Burke explained he was not a member of the bar but was "trained in the law." He said he would file a written brief today on what he considered to be three major conflicting statements in Justice Stewart's testimony to the committee. Chairman Eastland, Democrat of Mississippi, designated Senators Dirksen and Carroll, Democrat of Colorado, to examine the brief and advise the committee.

Questioned 6½ Hours

The 44-year-old Justice Stewart, who was given a recess appointment by President Eisenhower last fall, weathered a 2½-hour examination yesterday by Senator Ervin, Democrat of North Carolina.

Senator Dirksen said Justice Stewart was a "responsive witness" and did not draw any severe attack or rebuke from Senator Ervin or other Southern Senators despite their

[illegible] reporters yesterday how he would vote on the nomination, but told Justice Stewart at the close of the hearing:

"If you are confirmed, I think you will have an opportunity to render a great service on the Supreme Court. I am not willing to trust myself to a judicial oligarchy but rather to judges who will interpret the Constitution according to the intent of those who framed it."

Stewart's Viewpoint

Justice Stewart, a former United States Court of Appeals judge from Ohio, summed up his judicial philosophy when Senator Keating, Republican of New York, asked whether he regarded himself as a "creative judge who would be free to write new statutory law."

"I certainly do not," Justice Stewart declared. "So far as I am concerned, the only [illegible] way to judge is to judge each case on the facts of the record and to decide under the law and Constitution conscientiously, independently and with complete personal detachment."

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District Police Powerless At High Court, Says Official

If a Metropolitan policeman sees a man lighting a bomb on the steps of the United States Supreme Court, he apparently has no legal authority to try to stop him.

The reason, a Senate subcommittee was told yesterday, is the Supreme Court has its own special police force. By Act of Congress it has exclusive jurisdiction over the block on which the court is located, right out to the curbs.

"We feel a Metropolitan police officer can step on the Court's property only by invitation of the Court marshal," said Assistant Corporation Counsel Robert F. Keneipp.

Keneipp testified before the Fiscal Affairs subcommittee of the Senate District Committee on a bill to give the District Commissioners authority to commission special police officers to guard Government buildings.

Since the Commissioners found 10 years ago they do not have the authority, Keneipp said, both the Supreme Court and the Library of Congress have gotten from Congress the right to name their own officers.

Both acts have created "special islands of police jurisdiction" in the District, Keneipp said, from which Metropolitan police are excluded. He said indications are that more are forthcoming.

If the Commissioners are empowered to appoint special policemen for Federal agencies and departments, Keneipp said, this could be avoided. The Commissioners would then be charged with reviewing and examining candidates for the special police posts, among other things, to insure they are of good moral character.

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[illegible] Attack on C[illegible]

By Drew Pearson

Most people don't know [illegible] an official of Schenley Industries who [illegible] the American Bar Association's censure of the U. S. Supreme Court. The censure was adopted Feb. 24, and caused a record number of lawyers to resign from the Bar Association. It also prompted the Civil Liberties Union to issue a blistering blast against the ABA.

Pearson

The Schenley official is Louis B. Nichols, former press relations expert for J. Edgar Hoover and now executive vice president of Schenley Industries. Nichols served on the Bar Association's special committee on Communist Tactics, Strategy and Objectives, which claimed that Supreme Court decisions had caused "paralysis" in the prosecution of Communists and subversives.

It is now learned that several members of the ABA's special committee disagreed with Nichols but his resolution finally prevailed.

Interesting fact about Nichols is that he has had little experience as a lawyer in private practice. He got a law degree in 1934, the same year he entered the FBI. In 1957, the same year he left the FBI as public relations expert for J. Edgar Hoover, he became righthand man to Lewis S. Rosenstiel, chairman of Schenley Industries.

Schenley operates one of the biggest whiskey empires in the world, including Associated Kentucky Distillers, Affiliated Distillers Brands of New York, Blatz Brewing Company of Wisconsin, Canadian Schenley Limited, Canadian Melrose Distillers of Canada, John McNaughton of Quebec, Quebec Distillers Ltd., [illegible] of New York, [illegible] & Co., [illegible] Delaware, Old Charter Distillery Co., Schenley Pharmaceutical Laboratories, [illegible] Evans & Co., Ltd., [illegible] together with [illegible] California, [illegible] plant in Louisville, [illegible] Rum of Puerto Rico.

Senate Seniority

Virginia's veteran [illegible] Willis Robertson doesn't [illegible] to have his ideas challenged by freshmen Senators who, he believes, should be seen [illegible] not heard.

His face flushed [illegible] egg red the other day [illegible] Wyoming's able, young [illegible] Gale McGee broke into an Appropriations Committee hearing to ask some questions Robertson didn't like.

"Who is this young [illegible] to [illegible] my subcommittee?" snorted the Virginia Senator.

Assured that the "young man" was a Senator in good standing, Robertson fumed while McGee questioned Internal Revenue Commissioner Dana Latham.

"It is refreshing for me to be asking you questions instead of your asking me questions," McGee told the nation's chief tax collector.

Then the Wyoming freshman brought out facts that Robertson had been trying to brush aside about the need for more Internal Revenue agents.

Latham testified that an estimated [illegible] billion in taxable income is escaping taxation for lack of enforcement, that every dollar spent on revenue agents brings in [illegible] in additional [illegible].

Yet Robertson had been calling for a cut in revenue agents for economy's sake.

"That is like cutting your throat to stop a nosebleed," commented McGee.

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SUPREME COURT

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(COURT)
THE DEAN OF BAYLOR UNIVERSITY'S LAW SCHOOL TOLD CONGRESS TODAY THAT A BILL TO END FEDERAL INVALIDATION OF STATE LAWS WOULD HELP THE SUPREME COURT AND IS NOT AN ATTACK UPON THE COURT.
THE EDUCATOR, ABNER V. MCCALL, STRONGLY ENDORSED THE PENDING SENATE BILL WHICH PROVIDES THAT UNLESS CONGRESS PASSES AN ACT STATE LAWS IN THE SAME FIELD COULD BE INVALIDATED ONLY IN TWO CASES.
ONE WOULD ARISE WHEN THE STATE LAW IS IN DIRECT AND POSITIVE CONFLICT WITH FEDERAL LAW THAT THE TWO COULD NOT BE RECONCILED. THE OTHER WOULD OCCUR WHEN CONGRESS IN ITS ACT EXPRESSLY STATES THAT IT INTENDS THE FEDERAL LAW TO BE EXCLUSIVE AND THE STATE STATUTE TO BE INVALIDATED.
MCCALL SAID THE SUPREME COURT'S "NEW POLICY OF INTERPRETING THE SILENCE OF CONGRESS TO INVALIDATE ALL STATE ACTS IN THE SAME FIELD COINCIDED WITH A VAST INCREASE IN FEDERAL LEGISLATION."
THIS BILL WOULD HELP PRESERVE THE STATE GOVERNMENTS AND IT SHOULD BE ENACTED FOR THAT REASON ALONE," MCCALL TOLD THE SENATE INTERNAL SECURITY SUBCOMMITTEE.
BUT HE EMPHASIZED THAT THE LEGISLATION PRESERVES THE SUPREMACY OF FEDERAL LEGISLATION OVER STATE STATUTES WHILE PROVIDING A METHOD FOR CONGRESS TO INDICATE WHETHER A STATE LAW SHALL BE INVALIDATED OR BE ALLOWED TO CONFLICT.
"MANY HAVE CONSIDERED THIS BILL AS AN ATTACK UPON THE SUPREME COURT," HE SAID. "THEY ARE STRIVING TO BECLOUD THE ISSUE. IT WOULD AID THE SUPREME COURT."
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Supreme Court Refuses Record Use Appeal

The Supreme Court left standing an appellate ruling that a Federal recording of a telephone conversation with an alleged bootlegger could be admitted as evidence at the trial.

The tape-recorded conversation was between an Alcohol and Tax Division agent through a device attached to the agent's telephone when he called a suspected bootlegger.

The eavesdropping issue the court refused to consider was the latest of a string of cases in which the high court has been asked to outlaw evidence obtained through electronic devices.

Function Is Noted

In upholding the right of the agent to record the conversation, the Fifth Circuit Court of Appeals said the only function served by the recording was to preserve a permanent and accurate record of the conversation.

The defendants in this case, unlike earlier ones, sought high court review on the ground that the electronic device violated the Federal Communications Act rather than invaded Fourth Amendment protection.

In rejecting that view, the appellate court noted:

"The Communications Act goes a long way to safeguard individual liberty, the right to privacy and the insulation of one's home from Big Brother intrusions of a police state. We must expect to be alert to the increasing danger to these rights as the electronic industry continues its development.

"But the admissibility of conversation recorded with the consent of a party to the conversation is not such an invasion of privacy, that its disadvantages should outweigh its value as evidence in the search for truth in a criminal trial."

The high court has been picking its way through the maze of electronic eavesdropping problems but apparently is not ready to consider this version of the problem at this time. Justice Douglas wanted to review this case.

In another case, the court refused to review the conviction of Clyde Ramond Near who was sentenced to death in the 1958 slaying of a Virginia correction school counselor.

D. C. Case Rejected

Near, who has received more than a dozen stays of his execution, was convicted August 4, 1959, in Powhatan County Circuit Court in the slaying of Barry Steele Chapman in Mr. Chapman's quarters at Beaumont School for Boys.

The 37-year-old truck driver was accused of bludgeoning the caseworker to death.

In a District case, the Supreme Court refused to consider the narcotics conviction [illegible] claimed the evidence against him should have been suppressed because of unnecessary delay between arrest and court hearing.

The District case involved an attempt—rejected by the high court—to extend the Mallory rule, which bars confessions as evidence after unnecessary delay, to evidence collected while the defendant was in a jail cell.

The evidence was the development of a fingerprint on a cigarette package, which police said they saw Jackson throw from a car. The package, police testified, contained 10 capsules later revealed as heroin.

In another case from the District the Supreme Court left standing an appellate decision that a resident of Switzerland with a half interest in an Italian firm during World War II was an "enemy" under American law and his American assets could be seized.

The case, brought by the executor for the late Carlo [illegible] Wedekind, was an action to recover some $1.1 million taken by the Alien Property Custodian.

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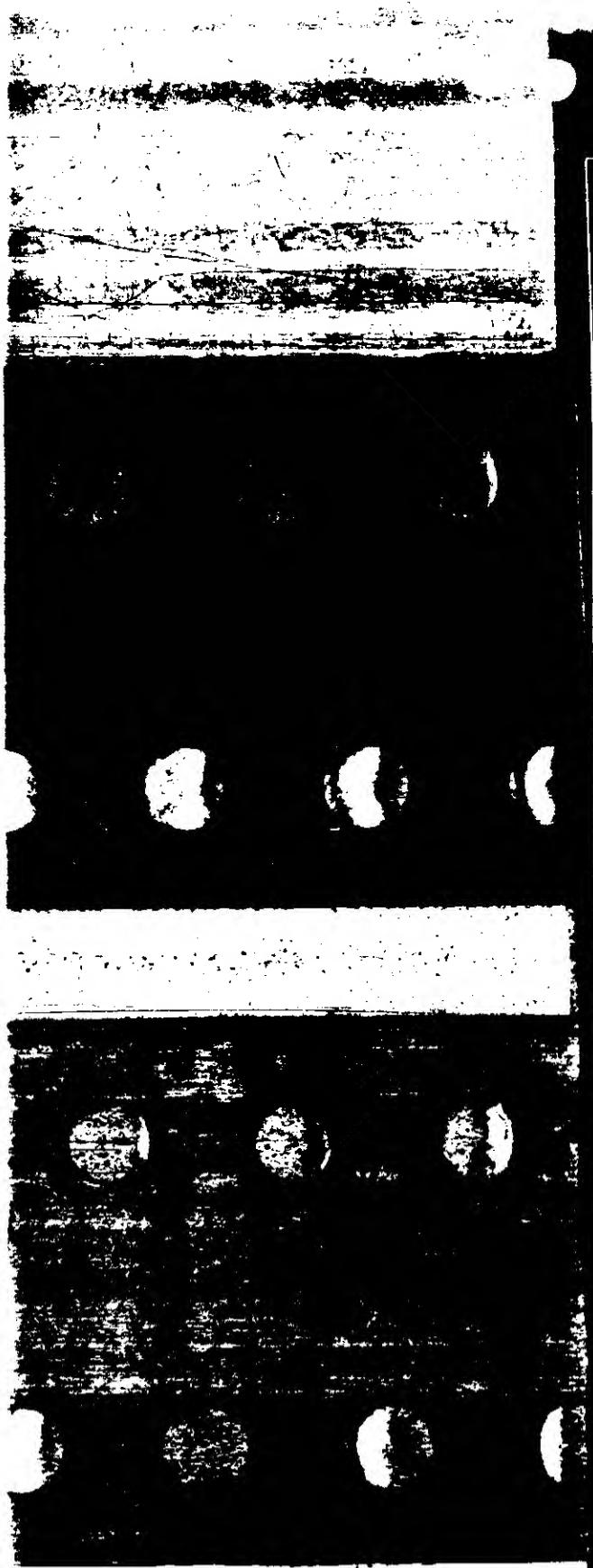

Perspective

Criticism of the Court

by Raymond Moley

IN THE discussion over the American Bar Association's series of recommendations to Congress for legislation clarifying, limiting, and defining our protections against internal enemies and subversion, it was intimated that it is unwise to criticize not only the U.S. Supreme Court but any of its interpretations of the law. There are several good answers to this claim, some of which have been supplied by the Justices of that Court.

The statement adopted by the House of Delegates of the ABA specifically disclaimed any general criticism of the Court itself or any effort to limit the jurisdiction of that Court as defined by the Constitution. The recommendations of the House of Delegates aim to have Congress clarify its own laws and to assume the powers vested in it by the Constitution.

For the Constitution in Article II, Section 3, states that "In all the other cases before mentioned the Supreme Court shall have jurisdiction, with such exceptions and regulations as Congress shall make." The only cases in which Congress may not "regulate" are named in the same section and are not pertinent to the cases which were under consideration.

THE BAR'S RESPONSIBILITY

The bar in this instance is acting in its most significant role. A lawyer is something more than a plain citizen. He is by tradition and law an officer of the court and an agent of the government. To refrain from guidance would be to shirk the bar's responsibility, as a professional association, to the public and to government.

Among the recommendations which the House of Delegates has made to Congress, three are outstanding: The states should be permitted to enact and enforce laws to protect the nation and its citizens against subversion, and Congress should make clear that by enacting its own security laws it is not pre-empting the field; the Smith Act of 1940 should be amended and strengthened to include not only participation in organized subversive groups, but the advocacy of overthrowing the government, "or to teach the necessity, desirability, or duty of seeking to bring about such overthrow"; and Congress should continue its committees on internal security.

The ABA report points out the necessity of such legislation because of the serious consequences of various decisions of the Supreme Court. These, in the holy name of freedom, have seriously impeded efforts to investigate and legislate against subversive activity.

In the debate in Chicago over the ABA recommendations some pertinent evidence favoring the report was presented by Alfred J. Schweppe, a Seattle lawyer who has labored indefatigably for years to provide public leadership through the bar. His evidence consisted of statements made by Justices of the Supreme Court itself concerning the right and duty to subject the decisions of the courts to merited criticism.

VIEWS OF JUSTICES

Back in 1898, Mr. Justice Brewer stated in an address that many criticisms may be "devoid of good taste, but better all sorts of criticism than no criticism at all."

In 1941, Mr. Justice Black said in writing for the majority concerning a contempt case against The Los Angeles Times: "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion . . . an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Dissenting in the same case, Mr. Justice Frankfurter nevertheless said: "Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

The late Mr. Justice Jackson wrote in "The Supreme Court in the American System" that "criticism by the profession" is one of the important criteria in appraising a decision's "real weight in subsequent cases."

The Court is a responsible, human institution. To elevate it above criticism would be to create a tyranny above the law and above the government of which it is a part.

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PASSPORTS FOR TRAITORS

Last June, the Earl Warren Supreme Court ruled that the State Department cannot lawfully deny a passport to a person who it knows or suspects is a Communist or otherwise subversive.

Since then says State's internal security chief, John W. Hanes Jr., 1,150 of such creatures have demanded passports and obtained them. Many are hard-core Reds with no plans to go abroad any time soon.

All this, says Hanes, "is a gap in our defense which our enemies have not been slow to take advantage of."

Can't Congress please take time out to ram a plug into this gap in a hurry; or are the multitudes of lawyers in Congress too afraid of the Warren Court to reverse its passport decision and other decisions giving aid and comfort to Reds?

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6-18 (Rev. 1-28-59)

Warrant Ruling Okays Inspection for Health Purposes

By HOWARD L. DUFKIN
Star Staff Writer

The Supreme Court today upheld the right of a Baltimore sanitation officer to enter a home for inspection without a warrant. The court split 5-4 in the decision.

The majority opinion, written by Justice Frankfurter, held in essence that the Fourth Amendment safeguards against unreasonable searches involves mainly the right to be secure from searches for evidence to be used in criminal prosecutions. Under the necessity of protecting public health and welfare, the Fourth Amendment safeguard does not apply in cases such as today's in which evidence was sought to determine whether conditions conformed to the health code.

A strong dissent, writen by Justice Douglas, declared:

"The decision today greatly dilutes the right of privacy which every homeowner had the right to believe was part of our American heritage. We witness indeed an inquest over a substantial part of the Fourth Amendment."

Others Dissenting

Chief Justice Warren and Justcies Black and Brennan concurred in the dissent.

The majority opinion upheld a $20 fine imposed on Aaron D. Frank who had refused to admit to his home a sanitation official investigating rat infestation in the neighborhood.

The inspector had noticed trash and debris outside Mr. Frank's home and damaged entrance. The homeowner refused to admit the inspector.

Justice Douglas said the protection of the Fourth Amendment has heretofore been sought to protect privacy when civil litigation, as well as criminal prosecutions, were in the offing.

The court "misreads history when it relates the Fourth Amendment primarily to searches for evidence to be used in criminal prosecutions," Justice Douglas said.

Justice Douglas said the

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WARRANT

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England, [illegible] less frightful of public health than [illegible] fatally injacious of civil liberties, has long protected on the basis that where [illegible] denies entrance to a health inspector, a search warrant is needed.

"We cannot do less and still be true to the command of the Fourth Amendment which protects even the lowliest home in the land from intrusion on the mere say-so of an official," Justice Douglas said.

Justice Frankfurter for the majority said that "time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts."

Justice Frankfurter's opinion said no evidence for criminal prosecution was sought.

Mr. Frank, said Justice Frankfurter, "is simply directed to do what he could have been ordered to do without any inspection, and what he cannot properly resist, namely, act in a manner consistent with the maintenance of minimum community standards of health and well-being, including his own."

Justice Frankfurter said Mr. Frank's resistance "can only be based, not on admissible self-protection, but on a rarely voiced denial of any official

Justice Douglas said Mr. Frank agreed to let the inspector in if he got a search warrant, but balked when it was sought.

"No excuse exists here for not getting a search warrant," Justice Douglas said. "A whole day elapsed between the first inspection and the arrest. The only reason given for not getting a warrant was the officer's convenience."

Justice Douglas said the purpose of the Fourth Amendment was to protect the citizen against uncontrolled invasion of his privacy.

"It does not make the home a place of refuge from the law," Justice Douglas said. "It only requires the sanction of the judiciary rather than the executive before that privacy may be invaded. History shows that all officers tend to be officious; and health inspectors making out a case for criminal prosecution of the citizen are no exception.

"Certainly this is a poor case for dispensing with the need for a search warrant. Evidence to obtain one was abundant."

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SUPREME COURT

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(STEWART)

THE SENATE CONFIRMED THE NOMINATION OF SUPREME COURT JUSTICE POTTER STEWART IN THE FACE OF SOUTHERN AND NORTHERN COMPLAINTS ABOUT METHOD OF HIS APPOINTMENT.

EVEN SOUTHERNERS WHO REGISTERED OPPOSITION TO CONFIRMATION OF THE 44-YEAR-OLD OHIOAN PRAISED HIM FOR HIS LEGAL ABILITY AND INTEGRITY.

THE DIXIE DEMOCRATS ATTACKED THE NOMINATION ON TWO MAIN GROUNDS: (1) THAT THE JUSTICE DEPARTMENT HAD HIM APPOINTED BECAUSE HE FAVORS SCHOOL DESEGREGATION AND (2) THAT THE SENATE WAS ROBBED OF SOME OF ITS ~~CONTROL OVER THE NOMINATION BECAUSE STEWART~~ CONTROL OVER THE NOMINATION BECAUSE STEWART HAD A RECESS APPOINTMENT AND HAD BEEN SITTING ON THE COURT FOR MONTHS.

SEN. PHILIP A. HART (D-MICH.), WHO BACKED STEWART'S NOMINATION, TOLD THE SENATE IT "MIGHT WELL INFORM THE PRESIDENT THAT THE PRACTICE OF MAKING INTERIM APPOINTMENTS... IS SERIOUSLY HAMPERING THE SENATE IN THE PERFORMANCE OF ITS CONSTITUTIONAL DUTIES."

HART SHARED THE CONCERN OF THE SOUTHERNERS ABOUT PRESIDENT EISENHOWER'S REVIVAL OF THE RECESS APPOINTMENT PROCEDURE IN FILLING SUPREME COURT VACANCIES. HE SAID PRACTICE OF A RECESS APPOINTMENT WITH THE JURIST TAKING HIS SEAT IN ADVANCE OF CONFIRMATION HAD NOT BEEN USED FOR MORE THAN 100 YEARS UNTIL EISENHOWER NAMED EARL WARREN AS CHIEF JUSTICE IN 1953.

THIS WAS THE COMPLAINT REGISTERED IN A JUDICIARY COMMITTEE MINORITY REPORT FILED BY CHAIRMAN JAMES O. EASTLAND (D-MISS.) AND SEN. OLIN D. JOHNSTON (D-S.C.).

EASTLAND JOINED SEN. RICHARD B. RUSSELL (D-GA.) TODAY IN PEGGING HIS OPPOSITION ALSO ON THE ARGUMENT THAT THE JUSTICE DEPARTMENT WOULD BLOCK APPOINTMENT OF ANY LAWYER WHO DISAGREED WITH THE TRIBUNAL'S 1954 SCHOOL DESEGREGATION RULING.

SENATE GOP LEADER EVERETT M. DIRKSEN (R-ILL.) TOLD THE SENATE THAT THE FOUNDING FATHERS "BORROWED" THE RECESS APPOINTMENT PROCEDURE FROM THE CHARTER OF NORTH CAROLINA WHEN THEY DRAFTED THE CONSTITUTION. HE LED THE PRAISE FOR THE RECORD OF STEWART, FORMER JUDGE OF THE SIXTH U.S. CIRCUIT COURT OF APPEALS.

EASTLAND SAID IT WAS EVIDENT FROM THE JUDICIARY COMMITTEE'S HEARINGS ON STEWART THAT THE JURIST ENDORSED THE 1954 INTEGRATION DECISION.

"IT IS PLAIN FROM THE HEARINGS THAT HE THINKS HE CAN AMEND THE CONSTITUTION AND STATUTES OF THE UNITED STATES IN ORDER TO MEET MODERN CONDITIONS," EASTLAND SAID.

HE DESCRIBED STEWART AS "AN IMPROVEMENT OVER WHAT WE NOW HAVE ON THE SUPREME BENCH." BUT HE ADDED THAT HE WAS "NOT SPEAKING WITH A LAUDATORY INFLECTION IN MY VOICE" ABOUT THE OTHER JUSTICES.

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WASHINGTON CAPITAL NEWS SERVICE

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Mr. Tolson
Mr. Belmont
Mr. DeLoach
Mr. McGuire
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C. Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

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WASHINGTON CAPITAL NEWS SERVICE

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Mr. Tolson
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Miss Gandy

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ADD 2 STEWART

SEN. STROM THURMOND (D-S.C.) SAID HE VOTED AGAINST STEWART BECAUSE THE JURIST HAD EXPRESSED SUPPORT FOR THE SUPREME COURT'S SCHOOL DECISION. AT THE CONCLUSION THURMOND CHARGED THAT THE SUPREME COURT IS A "MENACE TO THE PEOPLE OF THIS COUNTRY" BECAUSE OF RECENT DECISIONS WHICH HE SAID "ENCOURAGE COMMUNISM AND SUBVERSION." HE ADDED: "I UNDERSTAND HE IS AN HONORABLE MAN, A CAPABLE MAN. FROM ALL I HAVE HEARD ABOUT HIM, HE WILL BE AN IMPROVEMENT ON THE OTHER OCCUPANTS OF THE COURT. HE WOULD NOT HAVE TO BE TOLD HOW A LAWYER TO BE THAT. IN MY OPINION, THE PRESENT OCCUPANTS ARE MEDIOCRE LAWYERS ...PUT THERE FOR POLITICAL PURPOSES--TO SWING VOTES."

5/5--BLAND

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Mr. Tolson
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Mr. McGuire
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Men Should Be Prosecuted for Acts, Not Ideas

SUPREME COURT

By WILLIAM O. DOUGLAS
Associate Justice, Supreme Court

The other day, while being interviewed by students in Washington, D. C., I was asked by a serious looking young man: "What is the attitude of the Court these days toward labor?"

I was rather surprised by the question. For it seemed to assume that judges sat not to dispense justice but to administer their prejudices.

Any American court is supposed to be pro-First Amendment, pro-Fourth Amendment, pro-Fifth Amendment, pro-Fourteenth Amendment, and so on. For it is the Constitution the judges are sworn to defend. But it is somewhat shocking to hear that an American judge is supposed to be pro or against anyone who stands before him for justice.

The legislature of course passes laws that are pro or against certain groups. Judges, however, who enforce these laws according to their terms cannot fairly have attributed to them the partiality of those who passed the laws. It is the very essence of a government of laws that the predilections of judges not carry the day, that the law as written by the lawmakers be applied equally to all. This I had assumed to be elementary. Likewise assumed that the provisions of our Constitution had the same scope for everyone. But after being questioned by the young student and after reading some commentators who proclaim that at least in security cases the courts should use an abbreviated form of due process of law, I wondered if the hysteria of a few had not made new demands on us. I recalled Hutheesing's book on Red China entitled The Great Peace, where he describes a trial of so-called counter-revolutionaries. The victims stood with their eyes to the ground, their hands behind their backs. Long streamers hung over their shoulders reaching to their feet and proclaiming them to be criminals and traitors. The [illegible] interrupted by the crowd which clamored for retribution. When the prosecutor finished, the people shouted for the blood of the victims. They even threw eggs, tomatoes, and stones at the accused. And the defendants were given no chance to reply to the charges.

The moral is: Those whom the public condemns the judges should execute. Certainly, that is not the kind of justice America wants even when the courts deal with people as despised here as "counter revolutionaries" are despised in Communist lands.

Early in our history John Marshall, presiding over the trial of Aaron Burr, an alleged traitor, deplored "any attempt . . . to prejudice the public judgment, and to try any person . . . by public feelings, which may be and often are artificially excited against the innocent, as well as the guilty . . . a practice not less dangerous than it is criminal." This is a lesson in Americanism that needs to be taught over and over.

It is difficult at times for people to realize that the despised minorities in our midst are entitled to equal justice under law. It is easy to take the accusation as the proof and to condemn those who are charged with such unspeakable crimes as sedition or espionage. Yet we know from experience that if shortcuts are taken as to some citizens, a precedent is established that lowers the moral tone of the law and degrades it. Other minorities become the next victim as the breakdown in our safeguards and guarantees [illegible]

A discussion of the Supreme Court's role in protecting the rights of all citizens to be condemned only for what they do and not for what they think or believe was contained in a recent speech by Justice Douglas at the Columbia University Law Review dinner. Because it is a frank, simple discussion of some recent controversial "security" decisions, The Staff is reproducing here the major part of the address:

These safeguards [illegible] designed to protect the citizen not only against mobs, but against Government itself. Procedural due process gives protection to the citizen against overreaching officials. Abuse of power by government is an ancient evil. Those who drafted the Constitution and Bill of Rights had personal experience with attorneys general, public prosecutors and even judges who were willing to take shortcuts to carry out the will of a king. Our forefathers knew that a majority in a democratic society could be as tyrannical as any king. So these procedural safeguards were interposed to prevent overreaching by officials, to immunize trials from public hysteria, to make the public trial in America a calm objective affair, not a spectacle. . . .

SEE PAGE 67

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date MAY 24 1959

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[redacted] security of the Nation. Thoughtful lawyers never indulge in that pastime. Thoughtful lawyers never downgrade procedures in the traditions of our free society, that it is the very essence of due process.

Courts in recent years have had many rulings to make on matters of procedure in cases involving the so-called "subversive." Should the regulations of an agency be suspended and the agency allowed to act lawlessly merely because a so-called subversive is involved? Should the presumption of innocence be denied those who commit offenses against the security of the Nation? What kind of notice should a citizen have before he is charged and convicted of contempt either of the courts or of Congress? Contempt is a criminal offense. Should that notice be as definite as the notice or warning required in the case of other crimes? Notice is deeply embedded in our concepts of due process both where liberty and property are involved. There is sometimes pressure to lower the standard when security cases are before a court.

There can be no more important case before any court than one involving security. Yet security cases were occasions for such great oppression in days before our Constitution that the framers established special safeguards for their prosecution. Treason—the most heinous of all crimes—has a peculiarly high standard of proof written into Article III, Section 3 of the Constitution. The definition supplies a "hard test" (Haupt vs. United States, 330 U. S. 631, 644) to avoid the evils of prosecutions for such illusory and dangerous charges as "compassing" a ruler's death. Cramer vs. United States, 325 U. S. 1.

The philosophy of our system of laws was that men and women were to be prosecuted for overt acts, not for their ideas. This requirement has had a long history. The terrible trials of the Inquisition were mainly concerned with matters of dogma and belief, not with conduct against the Christian faith.

[redacted] abroad to get perspective on [redacted] own country. The American [redacted] tradition for intolerance has grown greatly in recent years. The [redacted] tales that reach the foreign [redacted] are not so much the quiet [redacted] courts in seeing that even the despised person gets a fair [redacted] as the pronouncements of [redacted] and other groups condemning people not for their deeds but for their ideas. The witch hunt has put much pressure on agencies of Government to lower the standards of law administration at home. It also has done us inestimable damage abroad.

When the FBI was making its so-called Red Raids in 1920, shamefully arresting many innocent people in a vast dragnet, there was a current saying, "Civil liberties? So is your old man." That stirring comment stung like a lash at the time and lingers as one of our most melancholy memories. It was repeated in [redacted] words during the late war and made America the symbol of intolerance in Europe and Asia.

On travels abroad one [redacted] in new perspective the role of the judiciary in a troubled world. [redacted] even the new countries of Burma, India and Israel and you will see how judges are great rocks over which the waves of hysteria break. They stand their own in times of storm and stress. They do not become agents of public passion.

Often there are segments of society that want courts to be agencies of retribution, not dispensers of justice. It is against those groups that the bar must be opposed. It is to them that the bar should extend lectures and classes in the true Americanism of our Constitution and Bill of Rights. The educational program must reach every public forum, every classroom. It must be ever-[redacted] to each generation that in America a man is to be condemned only for what he does not for what he thinks or [redacted]

[redacted] who acted with [redacted] law and of property [redacted] facts." "It may, however, be observed," he said, "that a [redacted] such, whether made up of [redacted] ernment officials acting [redacted] structions from the Department of Justice, or of criminals, [redacted] and the vicious classes." Collins v. Skeffington, 208 F. 2d 48.

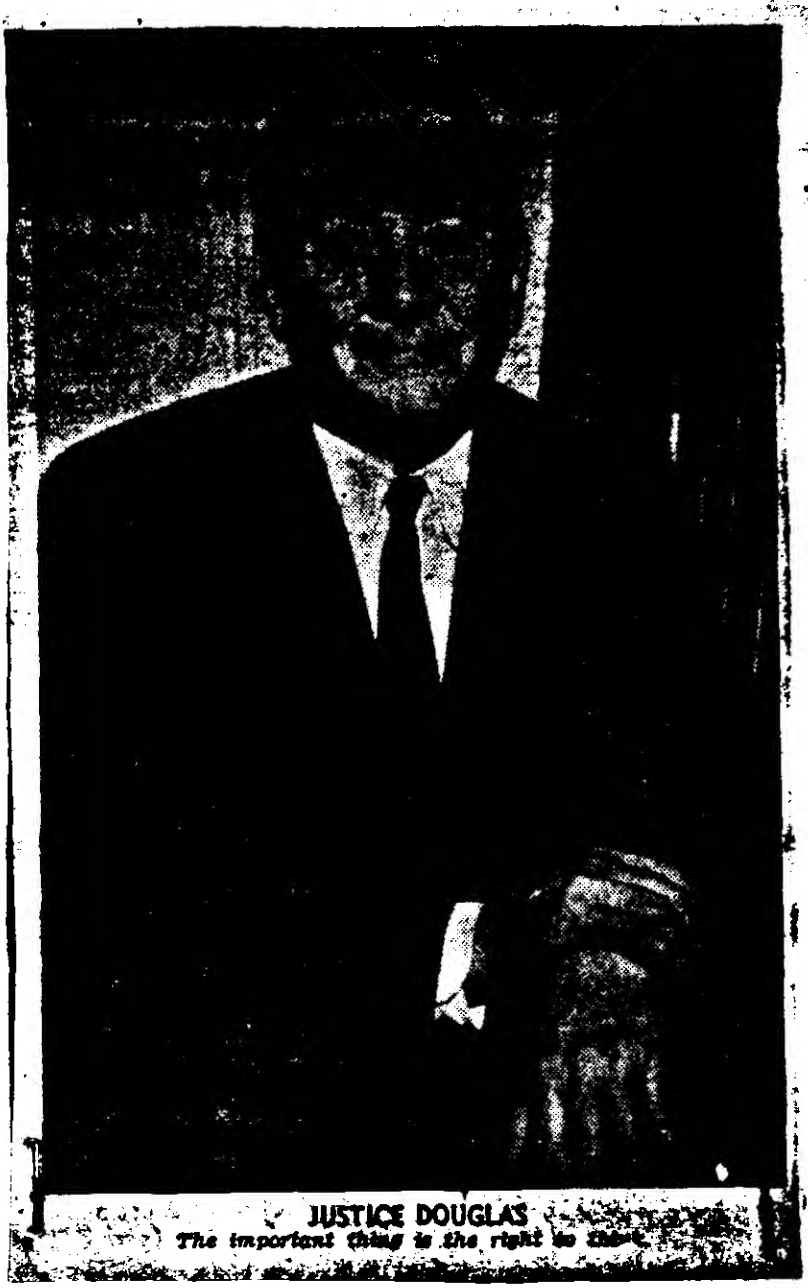
The Power of the Free

"The strength of a free [redacted] is in its free institutions. There is tremendous power in those who dare to be free. A nation gets its bold strength when every [redacted] munity knows that its courts are not agents of passion, that [redacted] administered [redacted] cannot generate strength by adopting totalitarian methods. Every shortcut against [redacted] and constitutional [redacted] an awful precedent. The victim may be a dyed-in-the-wool Communist today. Tomorrow he may be one who only knew a Communist, or one who believed in Socialism, or one who was opposed to the segregation of the races. Once this tactic is approved,

[redacted] how to travel the world [redacted] how truly virulent and dangerous it may become. But even in the dreary and far reaches of the world where it has grievances without number to exploit, it has succeeded in fastening itself on a country only in extreme circumstances. No Communist regime has yet ever taken over a democratic nation. In Kerala, a state in India, the party won an election in 1967—its first parliamentary victory in world history. But that is a young democracy; and there were special grievances, including an average annual income of $24 per person. The Communists have been able to take over a nation by force and violence only under one of two conditions. First are situations like China where grievances and sufferings piled high, where morale dropped low, and where there were no democratic means to effectuate reforms. Bloody action seemed the only way out. Second are those instances where Communist Party members were propelled into positions of power (as in Eastern Europe) by the intervention of an army from a neighboring Communist country.

Faith in America is faith in her free institutions or it is nothing. The Constitution we adopted launched a daring and bold experiment. It was bold and daring because under that compact we agreed to tolerate even ideas we despise. We also agreed never to prosecute people merely for their ideas or beliefs.

We lawyers should be more alert to these infringements than other citizens who may not be so well trained in history and political science. We should know that total security is possible only in a totalitarian regime. Then all classrooms can be patrolled, all professors tested for unorthodoxy, the press censored, and radio and television scripts edited so that there will be no ideological strays in America. Then judges can be hand picked to carry out orders and removed if they fail to obey. Then we will have "security" in the Communist sense of the term. But we will have lost that passion for freedom which has made America the great inspiration of oppressed people the world over.



JUSTICE DOUGLAS
The important thing is the right to think.

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When the Public Judges the Court

[illegible] and those who defend, its rulings. A writer examines [illegible]

By ALAN F. WESTIN

In the past three years, the Supreme Court has been denounced for "judicial misbehavior" by a wide assortment of critics, ranging from the American Bar Association and Southern officialdom to state court judges and the Daughters of the American Revolution. Bills and constitutional amendments have been sponsored in Congress to limit the Court's jurisdiction, and to make the justices think twice before extending their "activist" doctrines. [illegible]

To listen to many of the wisest commentators on our constitutional politics, this imbroglio is not strikingly different from situations which the Supreme Court has encountered ever since the days of Chief Justice John Marshall and his self-declared archfoe, Thomas Jefferson. But is it? In my opinion, this battle between Court and critics is distinctly different from any other in our history.

In each previous struggle over the proper role for the Federal judiciary in our governmental system, a property issue has been at the heart of the controversy. While the doctrines of the justices have always been a matter of debate, there were five notable periods when the Supreme Court became a leading political issue, and prompted campaigns by powerful blocs in Congress to alter the Court's personnel or its powers.

THE years 1821-24 and 1831-33 saw protests against the Court's interference with state regulation of banks, land titles, companies and other parts of the mercantile establishment. Arguments during 1857-60 dealt with the Court's treatment of slavery as a property matter and the impact of the slave system upon the economies of the West, North and South. The years 1896-1912 were marked by protests against the Federal judiciary's insulation of corporate enterprise from both state and national measures aimed at monopoly, taxation and labor relations. Finally, 1934-37 centered on the Supreme Court's barriers to social welfare legislation and to national management of the national corporate economy. In all of these episodes, powerful economic interests were directly involved in defense of their privileges.

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date

The current debate over the Court's role has no comparable economic basis. The reason for this lies in the character of the decisions that have precipitated protest. While the Supreme Court under Chief Justices Vinson and Warren has not been a "pro-business" Court, as in the days of Chief Justices Marshall or Taft, neither has it been "anti-business." In matters directly affecting business, as in labor relations, anti-trust and tax issues, the Warren Court has been simply an enunciator of the "social capitalist" *status quo* in American politics.

Instead of property issues, the present controversy deals with matters of liberty and equality. Where the outcome of disputed cases in the past decided what people could do with their property, free from Government restraint, the new cases decide what people can advocate and organize to promote, which people are consigned to be "more equal than others," and what procedures Government may follow in apprehending and prosecuting the non-propertied antisocial elements in our population.

WHERE the beneficiaries of the Court's rulings were once land speculators, planters, railroads and public utility holding companies, the new befriended are Negroes, syndicate leaders, Communists, balky college professors, rapists and Government employes accused of disloyalty.

Accompanying this shift in the issues has been an equally fundamental shift in the groups who attack and defend the judiciary. Previously, it was the spokesmen for liberalism and majority rule—from Jeffersonians to New Dealers—who denounced the Supreme Court. They did so on the rational liberal theory that the Court was an insufferable restraint upon majority will. In a democratic society, they argued, judges with life tenure had no

ALAN F. WESTIN, Assistant Professor of Government, Cornell University, often writes about the Supreme Court.

right to substitute their notions of good policy for the wishes of the people acting through their elected representatives—Congress, the President and state governments.

Yet, in the Nineteen Fifties, liberal groups are defending the judiciary as a wise agency to check mass passions and to protect natural rights from invasion by the "political" branches of Government.

A similar reversal has taken place in the conservative camp. Previously, liberal critics were opposed by propertied groups who declared [illegible] ... that the Supreme Court ... [illegible]

(Continued from Page 16)

permits the judiciary to intervene.

Finally, this is the first controversy not to present basically a party-line division. Previously, Jefferson, Jackson, Lincoln, Bryan and Roosevelt led the bulk of their party faithful against the disputed judicial doctrines. The party dominated by property interests being protected by the Court defended the Justices. Today, with property issues absent, there are no party positions. Eisenhower remains aloof. Stevenson supports the Court. Congressional Republicans and Democrats are divided. In this controversy, conservatives among the two parties face liberals from the two parties.

WHAT do these changes import for the present controversy over judicial review? On this score, I think it may be wiser to ask questions and supply speculations than to issue firm conclusions.

First of all, why have liberal and conservative elements changed positions? Have the ideological bases of these classic camps undergone a transformation in the Nineteen Fifties? I think the answer is less spectacular than that. An overwhelming majority of liberals now defend the Supreme Court and judicial review because the Justices are handing down rulings on liberty and equality issues which accord with liberal beliefs. Conservatives are opposing the Court because it has become "dangerously unsound" on these matters.

It is clear that whether [illegible] ideological [illegible] ... [illegible]

A SECOND question is why a majority of justices came to make this shift of position. On this subject, since justices do not allow themselves to be polled or given Rorschach tests, the area of speculation is remarkably wide.

Perhaps, like nature, Supreme Court justices abhor a vacuum. Since 1937, a majority of justices have been committed to the concept of "judicial self-restraint" in matters of economic regulation by the elected branches of government. For two decades, not a single Federal tax measure, regulation of commerce, national welfare program or [illegible]

labor law has been declared unconstitutional.

While there was some talk within the Court between 1937 and 1953 of applying a different, more interventionist, standard of review for liberty and equality cases, a majority of the Court generally applied self-restraint across the board. Appointees who looked forward to enunciating high constitutional principles must have chafed under these self-imposed bonds.

By itself, I doubt whether this yearning for glory would have precipitated the departures of 1956-57. The pos-

[redacted]

Chief Justice Vinson and Justices Jackson, Reed, Minton and Burton were judges who either found the case for authority persuasive in most liberty cases or else felt that the Supreme Court ought to exercise self-restraint in these as well as property cases.

In place of these justices, the Eisenhower Administration has installed Chief Justice Warren and Justices Harlan, Brennan, Whittaker

[redacted]

HOWEVER, I think the earlier justices, had they still been on the Court when the outer limits of the internal security laws were reached, between 1954 and the present, would also have been impelled to take a more active position than they had previously. Justice Frankfurter, for example, has found a way to vote against Government action and for [redacted] more often than he had before. Justice Jackson would very likely have done the same.

In support of this hypothesis, it is useful to remember that courts have a way of defending liberty after a crisis has passed its peak. A delay in constitutional showdowns occurs on the theory that only when the dangers of excess are demonstrable and hysteria has dissipated will the people heed the justices' call to constitutional ideals.

It is also pertinent to note that the liberty and equality issues, while similar in being non-propertied, do not represent identical problems for the Supreme Court. This has led to two different configurations within the Court. On cases dealing with segregation and its implementation the justices have presented a 9-0 face to the nation. Here, federal intervention in the judicial [redacted]

[redacted]

[redacted]

[redacted] business organs, such as David Lawrence, have joined in the attack upon the justices, but I think it is more significant to note that corporate spokesmen and business associations, such as the N. A. M., have chosen to stay out of this campaign.

Can the Court depend upon liberals, plus residual Court-worship in the population, to defend it against the nonbusiness conservatives? As Congressional events in 1958 showed, the Court's critics are far from few. With the unending animus of the Southerners (and Southern political power in Congress) to lead the drive, the Court is faced with more than a temporary round of dissent.

On the other hand, it would be a mistake to underestimate the strength of the Court's defenders in the new political atmosphere of post-World War II America. With the importance of Negro voters constantly growing in urban politics outside the South, and with white groups such as Jews continuing to identify themselves strongly with the anti-segregation issue, the Court's equality decisions are likely to be supported not just by liberal groups but by the urban machine leaders of both our political parties.

I THINK the Court has a somewhat rockier road for its liberty decisions, and it would not be at all surprising to see Congress reverse several specific rulings such as those dealing with the Smith Act, passport policy or state sedition laws. Even on the liberty side, however, the Court is not altogether defenseless. Distaste for McCarthyism, a desire for more careful scrutiny [redacted] Association's criticism of the Supreme Court, that the A. B. A.'s resolution was really rather mild and that the president of the A. B. A. has felt it wise to stress publicly that the A. B. A. had no intention to attack the Court but only to suggest stronger antisubversive machinery.

I DO not mean to give the impression that a determinist tide rules the future of the present conflict over judicial review. Much will depend on how wisely and well the justices decide specific cases, when they choose to intervene and when to leave issues to the political branches of government, and whether the Court displays that basic craftsmanship in opinions without which a judge appears naked to those who do not agree with the results in cases.

The debate will also be affected by many factors not under the control of the justices at all, such as whether the nation can find a President who understands what the justices are saying and will place the prestige of the White House behind the Court's decisions.

At present the Court seems firmly fixed in its course. For the interventionist justices there are the hopes of making high national policy and promoting liberal goals to spur them onward. For the justices who lean toward judicial self-restraint there are other compelling factors. Concerned with the prestige of the Court, they realize that the Court cannot draw back from its desegregation approach without compromising its basic position [redacted] moderate stands [redacted] described by angry critics as sweeping doctrines. There is nothing which can stifle a good judge's basic more firmly than erroneous charges by groups which equate [redacted] tion of inescapable responsibility with a "treasonous" usurpation of power.

Whatever this examination of the history of American judicial review indicates about the present or the future, one thing seems clear. French proverbs to the contrary notwithstanding, the more things change, the less likely they are really to be the same. History may teach the justices that they are not the first to face fundamental attacks, but this Court will have to find its own path to success in dealing with "status" issues which have replaced property politics of past generations.


SUPREME COURT
SUPREME COURT DECISIONS

0-20 (Rev. 1-28-59)

Mr. Tolson
Mr. Belmont
Mr. Del[illegible]
Mr. McGuire
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. [illegible]
Mr. W.C. Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

WPT-448

CORRECTION

THE SUPREME COURT HAS DISBARRED ATTORNEY JAMES HARVEY CROW OF MIAMI, FLA., FOLLOWING LIKE ACTION BY STATE COURTS.

THE HIGH COURT IN A BRIEF ORDER YESTERDAY STRUCK CROW'S NAME FROM THE ROLL OF ATTORNEYS ADMITTED TO PRACTICE BEFORE IT. BUT JUSTICE POTTER STEWART, WHO COMES FROM OHIO, TOOK NO PART IN THE ACTION.

JUSTICES WILLIAM O. DOUGLAS AND HUGO L. BLACK DISSENTED. THEY SAID THE COURT SHOULD HAVE APPOINTED A COMMITTEE TO LOOK INTO THE MATTER BEFORE IT ACTED.

INSTEAD THE HIGH COURT DIRECTED CROW TO STATE WHY HE SHOULD NOT BE DISBARRED AND, ON THE BASIS OF HIS REPLY, DISBARRED HIM.

THREE CHARGES AGAINST CROW RELATED TO HIS CONDUCT IN DIVORCE PROCEEDINGS. A FOURTH CHARGE SAID THAT $100 GIVEN HIM BY A CLIENT FOR POSTING A BOND HAD NOT BEEN USED AND WAS STILL NOT RETURNED.

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[illegible] Security Rulings [illegible]

[illegible]

The court spelled it in a decision to reinstate William [illegible] Vitarelli in his nonsensitive job as teacher with the Interior Department and give him $20,000 in back pay, less any amount he received in [illegible] since his 1954 dismissal.

What was considered more significant was that the court as a whole carefully combed the transcript of a security hearing granted Mr. Vitarelli and decided unanimously that the proceedings did not accord with the department's regulations.

Cites Hearing Error

Indeed, the court seemed to go out of its way to find a flaw that had not been pointed up in briefs and arguments.

This was failure of the hearing board to allow Mr. Vitarelli to confront and cross-examine a "nonconfidential" informant who had made damaging statements against him.

The opinion made clear it was not ruling on the use of confidential information. But, in this case, the name of the informant was mentioned, probably inadvertently, by the hearing officer.

This, in the eyes of the court, negated any "possible inference that the person was considered a 'confidential informant' whose identity it was necessary to keep secret. . . ."

Failure to call such a nonconfidential informant for confrontation and cross-examination was a violation of the Secretary's own regulations, the majority opinion, written by Justice Harlan, held.

The opinion also quoted liberally from the transcript to show that the hearing developed "into a wide-ranging inquisition into this man's educational, social and political beliefs, encompassing even a question as to whether he was a religious man.' "

Question of Disagreement

This also violated Department regulations covering security proceedings, Justice Harlan's opinion said. While the entire court agreed that the regulations had been violated, it was not clear that all agreed on the same specific instances of violations as cited in the majority opinion.

The court, in the past, has invalidated discharges on the ground that administrative regulations had been violated. But the court never had indicated such a close and detailed scrutiny of a hearing procedure.

Mr. Vitarelli had been employed by Interior teaching arts and crafts to natives on a South Pacific island. In 1954 he was accused by the department of, among other things, "sympathetic association" with three persons linked to communism and of having concealed from the Government the extent of such association. Following a hearing, he was dismissed as a security risk.

After a Supreme Court ruling that non-sensitive positions such as his did not come under the 1950 Security Act, Mr. Vita-

[illegible]

The Government argued this was a legal dismissal since Mr. Vitarelli's position was not covered by civil service and under this circumstance, the Interior Secretary could discharge him summarily.

But the court majority, in effect, ruled that the second dismissal was merely a "revision" of the first and illegal one and thus could not be upheld. Mr. Vitarelli was represented by Attorney [illegible].

The dissenting opinion, written by Justice Frankfurter, with the concurrence of Justices Clark, Whittaker and Stewart, held that while the original dismissal was invalid, the second action by the Secretary was a separate move and within the Secretary's powers.

Under the ruling, Mr. Vitarelli is entitled to be reinstated in his position and given time to try to qualify for civil service status since his post has since been placed under CSC protection.

Other actions by the court yesterday:

District Insanity Rule

The court refused to review the case of John D. Leach who asserted he is being held illegally in St. Elizabeths Hospital under an appellate court ruling.

Left intact was the appellate ruling that Leach, committed to the hospital after he was acquitted of a crime by reason of insanity can be kept there because "he may in the reasonable future be dangerous to himself or others."

[illegible] the Advancement of [illegible] People from a $20,000 [illegible] fine levied by a Georgia [illegible]. Alleged failure of the [illegible] to produce organization [illegible] for state income tax [illegible] led to the contempt [illegible].

Georgia contends the [illegible] not been finally determined [illegible]. [illegible] Supreme Court declined to [illegible] now. But it said the NAACP could apply again when [illegible] Georgia judgment became final.

Union Benefits

The court agreed to review a Chicago Federal court ruling that benefits paid by unions to striking workers are exempt from Federal income taxes.

The Government in appealing the decision said thousands of taxpayers receive millions of dollars in strike benefits every year.

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The Washington Daily News ___
The Evening Star A-5
New York Herald Tribune ___
New York Journal-American ___
New York Mirror ___
New York Daily News ___
New York Post ___
The New York Times ___
The Worker ___
The New Leader ___
The Wall Street Journal ___
Date JUN 2 1959

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